

OFFICE OF ZONING AND ADMINISTRATIVE HEARINGS
FOR MONTGOMERY COUNTY

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:
PETITION OF GILMOURE-BRUNETT, LLC : Case No. S-2781
: OZAH No. 11-05
:
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A hearing in the above-entitled matter was held on
November 10, 2011, commencing at 9:37 a.m., at the Council
Office Building, 100 Maryland Avenue, Room 200, Rockville,
Maryland 20850 before:

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Hearing Examiner

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E X H I B I T S

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P R O C E E D I N G S

MS. ROBESON: This is a continuation of the public hearing in the matter of Petition of Gilmoure-Brunett, LLC, BOA Case number S-2781, OZAH case number 11-05, an application for a special exception to permit a child daycare facility at 220 West University Boulevard, Silver Spring, Maryland, on land in the R-60 zone.

The property's legal description is lot 13, block P. Just for the record I'm going to recap where we are at the beginning of the hearing. If I say something incorrect, the parties, I'm sure, will correct me.

Initially, the applicant proposed a daycare facility consisting of 6,430 square feet for up to 120 children and 25 employees. Technical staff and the Planning Board both recommended denial of the application on June 9th, and June 16th, 2010, respectively.

The applicant proposed its originally schedule -- postponed its originally scheduled public hearing before the hearing examiner and it amended its application prior to the public hearing. The amended application proposed a 5,469 square foot building with 94 students and 20 employees.

The hearing examiner requested that technical staff advise whether the amended application was sufficiently reduced in scale to address the issues forming the basis of the Planning Board's original denial.

1 Technical staff advised that it did not consider the amended
2 application sufficiently addressed those issues. And staff
3 and the applicant presented the amended application to the
4 Planning Board.

5 The Planning Board submitted a memorandum again
6 recommending denial of the application on June 27th. At the
7 June 20th public hearing before the hearing examiner, the
8 applicant requested a postponement until the fall, in order
9 to amend the application in response to the Planning Board
10 and technical staff's recommendation.

11 The hearing examiner's public hearing was
12 continued until today. The third amendment to this
13 application proposes a 4,400 square foot childcare facility
14 with 76 children and 15 employees. This public hearing is
15 reconvened to hear testimony on the most recently revised
16 plan.

17 I did want to clarify for the record, page two of
18 the technical staff report states that I advised you to
19 amend the application. I did review the record and it was
20 my understanding, what I see from the record is that the
21 applicant on its own initiative wanted to amend the
22 application because, to address the Planning Board and
23 technical staff recommendation.

24 Does anyone have any corrections? Have I got it
25 straight for everyone?

1 MS. MEAD: I just think, Anne Mead, for the
2 record, in the first part of the comments, I think it was
3 inadvertently said June 2010 instead of December 2010 for
4 the first hearings.

5 MS. ROBESON: Before the Planning Board?

6 MS. MEAD: Right. Right. I think the, I think
7 what you just read into the record I think said June,
8 inadvertently, instead of December, for the first hearing.

9 MS. ROBESON: Okay. All right.

10 MR. LEIBOWITZ: I didn't catch that.

11 MS. ROBESON: I'd have to check that. The record
12 is what it is, but I will double check that when I write my
13 recommendation. Okay. All right.

14 Now, do we have any preliminary matters? It's my
15 understanding that someone called the office yesterday that
16 wanted speak on behalf of a citizens association?

17 MS. QUINN: Yes.

18 MS. ROBESON: Okay. Can you come forward, please,
19 and identify yourself for the record?

20 MS. QUINN: Yes. Harriot Quinn with the Woodmoor-
21 Pinecrest Citizens Association.

22 MS. ROBESON: All right.

23 MS. QUINN: We've been participating in this
24 process from the beginning. We have a letter on file with
25 the hearing examiner in opposition to the case. We've

1 presented testimony at both Planning Board hearings, and
2 we've been present at both sessions here.

3 MS. ROBESON: Okay. You're required, under our
4 rules, to submit a statement, if you are representing a
5 group, to submit a statement 10 days in advance. I'm going
6 to have to keep the record open. I just emailed both
7 attorneys yesterday some additional information from
8 technical staff. Did you receive that email?

9 MS. MEAD: Yes.

10 MS. ROBESON: Did you receive your email?

11 MR. LEIBOWITZ: Yes.

12 MS. ROBESON: So I'm going to keep the record open
13 for 10 days so that whatever everyone has an opportunity to
14 respond to what you say today. The other thing is, the
15 technical staff report is supposed to be submitted five
16 business days prior to our hearing, and we did, our office
17 did not receive a written copy of the report until Monday.
18 So I am going to have to leave the record open to provide
19 the requisite amount of time to respond to the technical
20 staff report as well.

21 So I'm going to let you testify today. The
22 applicant can submit any response that they wish to submit
23 within the time that the record is going to be held open.
24 Okay.

25 MS. QUINN: And that is why I wanted to come

1 forward, was because we did not receive the staff report,
2 which was a complete reversal of their original report until
3 Monday afternoon.

4 MS. ROBESON: Yes, we didn't receive it until
5 Monday afternoon, either.

6 MS. QUINN: And it was without the benefit of a
7 Planning Board hearing. So we wanted to bring it to your
8 attention.

9 MS. ROBESON: Yes. I have a question on that, but
10 okay. So that's fine. So you'll be able to testify today,
11 and the applicant, I'll hold the record open to give you
12 extra time, since this is the first time you're going to
13 hear what she's going to say, I'll hold the record open to
14 give you extra time to respond to her testimony. Are there
15 any other preliminary matters?

16 Okay. One thing I did not do, will counsel
17 identify themselves for the record, please?

18 MR. LEIBOWITZ: Good morning, Your Honor, Madam
19 Examiner, Louis Leibowitz on behalf of the South Four
20 Corners Citizens Association.

21 MS. ROBESON: Okay.

22 MS. MEAD: Good morning. Anne Mead on behalf of
23 the applicant, Gilmore-Brunett, LLC.

24 MS. ROBESON: Okay. Now, since I'm not going to
25 have a preliminary statement on the revised application, but

1 you are welcome to, you know, draw out, we will have closing
2 statements if you wish to, but I'd like to get moving on the
3 merits of the case. Ms. Mead, do you want to call your
4 first witness?

5 MS. MEAD: Yes. And my only opening comment was
6 that we were going to try to keep it narrow to the changes
7 in the plan, and the issues of the size and scale that have
8 been in question before the Planning Board. Our first
9 witness is John Sekerak, recalling Mr. Sekerak.

10 MS. ROBESON: Mr. Sekerak, you're still under
11 oath.

12 THE WITNESS: I understand.

13 DIRECT EXAMINATION

14 BY MS. MEAD:

15 Q Mr. Sekerak, are you familiar with the revised
16 plans that were submitted by the applicant on September 26,
17 Exhibit 96 in the record?

18 A Yes, I am. Our offices have prepared the site
19 plan for special exception landscaping, lighting plan for
20 special exception details, et cetera. We had participated
21 in the dialogue with technical staff. We had met with the
22 neighbors, and then plan preparation began, again, with
23 collaboration with the staff, and the project team, and
24 prepared the application package that you see before you
25 now.

1 Q Thank you. Were you in attendance at the Planning
2 Board hearing on June 16th?

3 A Yes, I was.

4 Q And have you read their report, issued June 27th,
5 as Exhibit 94 in the record?

6 A Yes, I have. At that hearing, the applicants had,
7 you know, expressed a decision, willingness to reduce the
8 enrollment to eliminate the need for the additional findings
9 for the child per square foot plot area, and the Planning
10 Board had the recommendation to, you know, they had received
11 that and advised that the size and scale of the building be
12 proportionally reduced also, but their concern was not just
13 the enrollment number, but size and scale of the building.
14 So that's what guided us on the revised application.

15 Q Can you explain your process for the revisions to
16 the proposed application?

17 A Again, we started out with the basis of
18 eliminating any need for the additional findings. Folks
19 were having troubles with that, regarding the child square
20 foot ratio. Then the architect on the project team studied
21 building designs that would be appropriate to accommodate
22 the 76 children, that's what you see now, similar in
23 efficiency as what had been proposed before.

24 If you recall from the previous testimony,
25 administrative function are able to be used, accomplished

1 outside this building and one of the other Child Way
2 facilities. So again, a very efficient building for the
3 number of children.

4 The architect determined that a 4,400 square foot
5 building would be appropriate. That translates to a 20
6 percent building reduction from the previous one, and a full
7 32 percent reduction from the initial application.

8 And we further, you know, analyze, again, the --
9 recognizing the master plan encouragement of residential
10 size and character, we analyzed homes in the surrounding
11 area, the other structures in the surrounding area.

12 And we also analyzed the previously approved
13 homes, the homes for the previously approved lots for the
14 same very property. And, you know, again, to help guide
15 regarding residential character and scale. And I don't want
16 to reduce character and scale to a mathematical exercise,
17 but I know it's --

18 MS. ROBESON: Well, I think the Planning Board did
19 do that in their recommendation, their second
20 recommendation. So I think it's appropriate to address it.

21 THE WITNESS: And I reluctantly will be addressing
22 that, again, character and scale, for those of us in the
23 design practices, to reduce it to a mathematical exercise is
24 difficult.

25 MS. ROBESON: I understand that.

1 THE WITNESS: Okay. Thank you. With that said,
2 there are, there is a smaller structure, you know, a two-
3 story home right next door on 413 Gilmore at, we
4 understand, about 1,232 square feet.

5 MS. ROBESON: Can you, is that shown on that --

6 THE WITNESS: It's the smaller one right next
7 door.

8 MS. ROBESON: -- close to Brunett Avenue?

9 THE WITNESS: I'm sorry, this is Gilmore, running
10 along the bottom of the site.

11 MS. ROBESON: Gilmore, I'm sorry. Now, I need --

12 THE WITNESS: Brunette runs, we'll call it north
13 and south, although the north is similar, diagonally.

14 MS. ROBESON: Okay. That's fine. So you're
15 indicating -- first of all, if we're going to refer to this,
16 which is helpful, I need that to be marked. Is that already
17 in the record?

18 THE WITNESS: No, it is not.

19 BY MS. MEAD:

20 Q Is it a repeat --

21 A I'm sorry.

22 Q -- of what we filed?

23 A Yes.

24 Q Yes. It's Exhibit 99©, revised illustrative.

25 MS. ROBESON: Would you mark that as Exhibit 99©,

1 duplicate. Do you have any objections,
2 Mr. Leibowitz?

3 MR. LEIBOWITZ: No.

4 MS. ROBESON: All right. So you were indicating
5 that the house you were referring to is too generic -- oh, I
6 see. I see the arrow. I didn't see the arrow. Generically
7 to the east, fronting Gilmore --

8 THE WITNESS: Gilmore, correct.

9 MS. ROBESON: -- the closest building.

10 THE WITNESS: Uh-huh.

11 MS. ROBESON: All right.

12 THE WITNESS: Correct. The largest home directly
13 surrounding, are these structures directly across the street
14 on University Boulevard. When I refer to SDAT, that's the
15 State Department of Assessment and Taxation --

16 MS. ROBESON: Right.

17 THE WITNESS: -- information. It is obviously
18 inaccurate. And I had provided the letter, a memorandum
19 describing that as Exhibit --

20 BY MS. MEAD:

21 Q 96(h).

22 A -- 96(h), if you recall.

23 MS. ROBESON: That was the one on the various
24 house sizes in the surrounding neighborhood?

25 THE WITNESS: Correct. Correct. Dated September

1 21st.

2 MS. ROBESON: Right. Okay.

3 THE WITNESS: And I'll just paraphrase. I mean,
4 the SDAT information is, you know, again, obviously flawed.
5 It --

6 MS. ROBESON: Go over again why it's flawed? I
7 guess I was confused because I didn't have a map in front of
8 me. Can you give me the address of the confronting houses
9 across University Boulevard? I didn't know which buildings
10 went with which analysis.

11 THE WITNESS: Got you. This is lot 17,
12 directly --

13 MS. ROBESON: Okay, so that's 219 West University
14 Boulevard?

15 THE WITNESS: Exactly. So the first attachment to
16 the letters, the tax map that shows which one 17 is.

17 MS. ROBESON: Okay. And what was the GIS source
18 you used?

19 THE WITNESS: Montgomery County.

20 MS. ROBESON: Okay.

21 THE WITNESS: In terms of footprint and aerial
22 photographs and onsite observations regarding proportion,
23 you know, number of stories, proportion of second story to
24 first story.

25 MS. ROBESON: Now, how did you make the visual

1 estimate of the amount of the second floor?

2 THE WITNESS: From on site observations and --

3 MS. ROBESON: What's that mean? You looked at it?

4 THE WITNESS: Uh-huh. And aerial photographs, for
5 instance, the last attachment that you have to that same
6 letter is the birds eye view.

7 MS. ROBESON: The last attachment. Okay.

8 THE WITNESS: To that same letter was a bird's eye
9 view of the home across the street.

10 MS. ROBESON: I'm sorry. I'm trying to leaf
11 through this. I'm taking a while.

12 THE WITNESS: No problem.

13 MS. ROBESON: Okay. I see an aerial photograph.
14 Oh, I see it.

15 THE WITNESS: It's a two-page memorandum with
16 four attachments.

17 MS. ROBESON: Okay.

18 THE WITNESS: The lot 17 that we're referring to
19 is in the upper left hand corner of that. It shows the, on
20 the same lot, the two structures.

21 MS. ROBESON: Yes. Oh, I see, it's got a bump out
22 and two dormers and a second floor. Okay.

23 THE WITNESS: Yes. Both structures are two-story
24 buildings. And you can --

25 MS. ROBESON: Okay, so which one is 217, the one

1 with the dormers to the --

2 THE WITNESS: No. The lot is in the far upper
3 left corner, and it has those two white structures --

4 MS. ROBESON: Okay.

5 THE WITNESS: -- like roof structures, both on
6 the same lot.

7 MS. ROBESON: All right.

8 THE WITNESS: And you can see that in the plan
9 view on Exhibit 99©.

10 MS. ROBESON: Okay. All right. So it's the two
11 white buildings in the upper left hand corner of 96. Did
12 you say this was (a)? Okay. I don't have these
13 attachments, and this is just for the record, I don't have
14 the attachments separately numbered. So I'm going to, your
15 96(h), I'm going to mark these aerials as 96(h)(1),
16 96(h)(2). Okay, so we're looking at 96(h)(2) and you're
17 referring to the two houses in the upper left corner that
18 are white?

19 THE WITNESS: Correct.

20 MS. ROBESON: Just for the record, so everybody
21 knows which houses, I've read records that they go like,
22 which house are they talking about. So that's why I'm doing
23 that.

24 THE WITNESS: Understood. Do the other
25 attachments of tax map and SDAT sheets --

1 MS. ROBESON: Are you going to refer to them?

2 THE WITNESS: They're the source of the
3 information.

4 MS. ROBESON: Well, I'll mark the SDAT as
5 96(h)(3). They'll be out of order. And is there another
6 attachment?

7 MR. LEIBOWITZ: There's two pages of that.

8 MS. MEAD: Two pages.

9 MS. ROBESON: Wait a minute. The SDAT map is
10 96(h)(3). The SDAT printed record 219 West University
11 Boulevard is 96(h)(4). The record, SDAT record for 211 is
12 96(h)(5). All right. Now, with that --

13 THE WITNESS: All right. With that, let's see, on
14 96(h)(4), it's indicating that the total enclosed area is at
15 1610 square feet.

16 MS. ROBESON: Which property?

17 THE WITNESS: The same property, lot --

18 MS. ROBESON: The 219?

19 THE WITNESS: Yes, 219 University Boulevard.

20 MS. ROBESON: Okay.

21 THE WITNESS: Also known as lot 17.

22 MS. ROBESON: Okay.

23 THE WITNESS: Through casual observation, you can
24 tell that it's much, there is obviously a much larger amount
25 of enclosed area on that lot.

1 MS. ROBESON: What is the square footage of the
2 footprint?

3 THE WITNESS: Of the footprint?

4 MS. ROBESON: I'll look.

5 THE WITNESS: Okay, wait. I do have that
6 information. I could come up with that.

7 MS. ROBESON: Wait a minute. For 219, you're
8 saying the combined GFA is comprised of one building at
9 approximately 2,232 square feet, and one building at 1,786,
10 which make up the 4,018 square foot total. So to come up
11 with your 4,000, you're taking both buildings?

12 THE WITNESS: Yes.

13 MS. ROBESON: What are the two buildings on that
14 lot? Are they houses?

15 THE WITNESS: I haven't been inside them, but
16 they're, they have no --

17 MS. ROBESON: To the best of your knowledge.

18 THE WITNESS: To the best of my knowledge, yes,
19 they're homes. Well, it's a home and --

20 MS. ROBESON: Something.

21 THE WITNESS: -- and something.

22 MS. ROBESON: That looks like a home.

23 THE WITNESS: Right. Yes. It can't be two
24 separate homes, but it could be a home and an inlaw's.
25 Fully understand, these are not precise measurements. GIS

1 is somewhat course itself. And then we are estimating the
2 amount of the second floor. So you can tell from the,
3 again, going back to 96(h)(2), the bird's eye, the amount of
4 the second floor on the forward structure, does not, does
5 not fully, you know, cover the footprint of that. So it's
6 an estimation. So in that sense, the primary purpose of
7 this is to just contrast the SDAT information of 2,232, I'm
8 sorry, of 1,610 square feet --

9 MS. ROBESON: I see.

10 THE WITNESS: -- with what is --

11 MS. ROBESON: So you're poking a hole at the
12 accuracy of the SDAT records as a means of proving the size
13 of the homes in the neighborhood.

14 THE WITNESS: Exactly. Thank you. And
15 understand, this is the most egregious that I'm able to find
16 in the immediate area.

17 MS. ROBESON: All right.

18 THE WITNESS: I've not done an exhaustive search
19 of SDAT of every home around here. But this one is, you
20 know, just really caught my eye right away when we began
21 analyzing this.

22 MS. ROBESON: Yes.

23 THE WITNESS: The contrast between 1,610 and what
24 I estimate to be over 4,000 square feet, does -- and that's
25 not inconsistent with what's been my experience with SDAT

1 information. It's, you know, very helpful at times. But
2 when building additions, committing the work, you know,
3 second stories, whole other structures --

4 MS. ROBESON: Well, technically, they're supposed
5 to send their building permit, the building permit agency is
6 supposed to submit the building permit to STAT, and they'll
7 pick it up on the next assessment. So I don't know what
8 happened here, but anyway, I understand what you are saying.

9 THE WITNESS: It is, this is not uncommon.

10 MS. ROBESON: Yes.

11 THE WITNESS: And the letter goes onto, it
12 describes another one down the street that is showing some
13 obvious errors.

14 MS. ROBESON: What describes another one? Is that
15 -- I have 219, 211.

16 THE WITNESS: And 211, yes.

17 MS. ROBESON: Okay. All right. Now, I've heavily
18 interrupted you, but I was confused about that when I was
19 trying to get ready for this.

20 THE WITNESS: Okay. I'm happy to clear that up.
21 The building right next door to the subject property along
22 University Boulevard, it is another one. It is partially
23 two floors. You know, again, just measuring the footprint.

24 MS. ROBESON: What's the footprint of that?

25 THE WITNESS: I don't have that information off

1 the top of my head.

2 MS. ROBESON: Okay.

3 THE WITNESS: But again, I haven't done an
4 exhaustive search --

5 MS. ROBESON: Right.

6 THE WITNESS: -- but they're, I do believe, for
7 instance, that the one for the property right next door --

8 MS. ROBESON: When you say right next door --

9 THE WITNESS: Yes.

10 MS. ROBESON: -- you're referring to roughly the
11 east side --

12 THE WITNESS: 413 Gilmore, which is --

13 MS. ROBESON: -- 413 Gilmore, which is on
14 Exhibit, is that --

15 MS. MEAD: 99@.

16 MS. ROBESON: That's the one directly east,
17 roughly east, fronting Gilmore, of the subject property?

18 THE WITNESS: Yes. Correct.

19 MS. ROBESON: And what are you saying about the
20 size of that?

21 THE WITNESS: I've got no reason to contest the
22 accuracy of the SDAT information in that one.

23 MS. ROBESON: Okay.

24 THE WITNESS: It doesn't appear to have enclosed
25 area that has been added --

1 MS. ROBESON: I understand.

2 THE WITNESS: -- in contrast to many of the other
3 properties --

4 MS. ROBESON: Across University.

5 THE WITNESS: -- across University or adjoining
6 the lot on University, or even across Gilmoure.

7 MS. ROBESON: Did you actually measure the
8 footprint of the property fronting University to the east of
9 the subject property -- no, directly adjoining, yes,
10 directly adjoining to the east, fronting University? Did
11 you measure the footprint of that?

12 THE WITNESS: From GIS information, yes.

13 MS. ROBESON: Okay. Is that 219? which, do you
14 have the address of that? Is that mentioned in this memo,
15 96(h)?

16 THE WITNESS: No, it is not. No, it is not.
17 Again, it was not intended to be an exhaustive --

18 MS. ROBESON: I understand.

19 THE WITNESS: Yes.

20 MS. ROBESON: Okay.

21 THE WITNESS: I'm sorry. The ones that I have
22 memorialized in that memo as indications are just those two.

23 MS. ROBESON: I understand.

24 THE WITNESS: But I do want to indicate, I do not
25 believe that those are isolated instances.

1 MS. ROBESON: I understand.

2 THE WITNESS: So that is home on parcel 927, and
3 indicated with an enclosed area of 1260 square feet. So you
4 can see its footprint relative to the one at 413 Gilmore.

5 MS. ROBESON: Which is directly east.

6 THE WITNESS: Yes. Their back yards abut each
7 other.

8 MS. ROBESON: Yes.

9 THE WITNESS: And they are obviously not
10 comparably sized buildings.

11 MS. ROBESON: Okay.

12 THE WITNESS: I mean, the one on Gilmore is two
13 stories. The one along University is a combination of one
14 and two stories. The west side is one story, the east side
15 is two stories.

16 MS. ROBESON: Okay.

17 THE WITNESS: And because I just don't have a good
18 way of measuring it, I didn't try, attempt to quantify it.
19 But again, just another indication that SDAT information, it
20 would be a flawed exercise to try to quantitatively do
21 everything on a mathematical comparison of, you know, those
22 particular --

23 MS. ROBESON: Right.

24 THE WITNESS: -- or using that information. All
25 right.

1 MS. ROBESON: Now you can -- I'm done.

2 THE WITNESS: All right. Now we're up. Okay.

3 MS. ROBESON: I apologize.

4 THE WITNESS: No problem.

5 MS. ROBESON: I really was confused about which
6 properties you were referring to in here.

7 THE WITNESS: We also analyzed and that I was
8 happy to see the memo to that effect that you emailed
9 yesterday, regarding the size of the homes that could be
10 built on the subject property in accordance with the
11 previously approved preliminary plan of subdivision.

12 It's obvious that those home sizes would be
13 consistent with a 4,400 square foot building, not just two
14 times it, but, you know, consistent with a 4,400.

15 There are different home sizes due to different
16 lot sizes allowed on here. But measuring the footprint on
17 the approved preliminary plan of subdivision, and if built
18 to the two and a half stories is permitted by right, those
19 homes would be 5,272 square feet, 4,500 square feet, or
20 4,000 square feet, again, depending upon which lot you are
21 looking at.

22 So four of those five homes on those previously
23 approved lots would individually be larger than the proposed
24 building. And the total of 23,544 square feet of all five
25 of those combined, would be five times the size of the

1 proposed building, all on this same lot, .87 acre lot.

2 And lastly, also, as described in my September
3 21st memorandum, 96(h), we looked at the previous structure
4 on the property. The master plan recognized its previous
5 use on the property, recommended its continued use as
6 office, as testified at the last hearing.

7 And similarly, as described in that, it was
8 consistent with the 4,400 square foot building that we're
9 proposing. We did those measurements by similar methods of
10 measuring GIS information footprint, looking at the aerial
11 photographs.

12 MS. ROBESON: Do you have that area photographed
13 that you looked at?

14 THE WITNESS: Yes. I'm sorry, I didn't bring
15 copies suitable for distribution, but it has a lot of my
16 scrawl on it. Would you like it?

17 MS. ROBESON: Yes, I would.

18 THE WITNESS: Okay.

19 MS. ROBESON: And why don't you give it to
20 Mr. Leibowitz first.

21 MR. LEIBOWITZ: Thank you.

22 THE WITNESS: I'm happy to mark it with an exhibit
23 number.

24 MS. ROBESON: Yes. This will be 131. And that
25 would be aerial photo of original house/office.

1 (Exhibit No. 131 was
2 marked for identification.)

3 THE WITNESS: And actually, this is GIS
4 information where the home itself had been removed, but the
5 GIS information remains.

6 MS. ROBESON: What does that mean?

7 THE WITNESS: I'll show you in a minute.

8 MS. ROBESON: Okay.

9 MR. LEIBOWITZ: I'm sorry. Exhibit 131, aerial
10 of?

11 MS. ROBESON: Aerial photo of original
12 house/dentist, dentist office.

13 MR. LEIBOWITZ: Could we get additional copies of
14 this maybe?

15 MS. ROBESON: Well, I don't know if -- why don't
16 you do this. Let's, I will see, let me take a two-minute
17 recess. Don't leave. Nobody leave. And I'm going to ask
18 our staff to make a copy of this. And I'll be right back.
19 Okay.

20 (Whereupon, at 10:11 a.m., a brief recess was
21 taken.)

22 MS. ROBESON: Okay. We're back on the record.
23 She's going to make copies, and you move on with your
24 testimony, and we'll come back to that.

25 THE WITNESS: Okay. On that subject, when you

1 get, again, the estimation of the floor area, the enclosed
2 area, gross floor area for that structure, as you'll see on
3 that aerial photograph it's, you know, after the structure
4 was removed, but previous photographs, you know, bird's eye,
5 et cetera, did indicate that a portion of the building was
6 two stories. So although we can measure the --

7 MS. ROBESON: Okay. Well, wait. Do you have the
8 previous photograph?

9 THE WITNESS: I do not.

10 MS. ROBESON: Okay.

11 THE WITNESS: I do not. So although we can
12 measure the GIS information regarding footprint, we have no
13 information to measure --

14 MS. ROBESON: On the number of stories.

15 THE WITNESS: Well, on the size of the second
16 story.

17 MS. ROBESON: I see. Okay. I understand. All
18 right.

19 THE WITNESS: So I can confirm it had a second
20 story. I cannot confirm the size of the second story.

21 MS. ROBESON: Okay.

22 THE WITNESS: So I just want to make sure that's
23 qualified in that extent.

24 MS. ROBESON: No, I understand.

25 THE WITNESS: But based on the size of the

1 footprint, only a quarter of the footprint would need to
2 have a second story to be the same size as the proposed
3 structure.

4 MS. ROBESON: Okay.

5 THE WITNESS: So the point is that the proposed
6 structure does not increase, the proposed 4,400 square foot
7 structure, does not increase the size of the structure upon
8 this very property.

9 MS. ROBESON: And what was the footprint of the
10 original structure?

11 THE WITNESS: It is written in the margins of that
12 photo that are being --

13 MS. ROBESON: Is being copied. Okay.

14 THE WITNESS: -- is being copied.

15 MS. ROBESON: We'll move on, then.

16 THE WITNESS: Okay. So I guess those are the
17 points I wanted to make regarding comparison, you know,
18 appropriately sized and residential in character of the
19 proposed structure relative, you know, appropriate for this
20 property. There are surrounding homes of comparable size,
21 and I don't mean to ignore even the place of worship
22 directly across Brunett Avenue, which is a larger structure
23 than what we are proposing.

24 But even the homes, the existing homes that
25 approach the size of this structure, that the existing

1 building on this very property was comparably sized, and
2 that homes built in accordance with the approved preliminary
3 plan would even be larger, individually larger than the
4 proposed structure, the four or five of those being larger
5 than the proposed structure, and cumulatively, you know,
6 five times the size of the proposed structure, over five
7 times.

8 So when it comes to residential character and
9 scale, it certainly meets that in a quantitative --

10 MS. ROBESON: Does it meet the Planning Board's
11 recommendation? They have a recommendation in their --

12 THE WITNESS: Two times.

13 MS. ROBESON: Two times?

14 THE WITNESS: Yes, two times. Right. And it
15 depends upon what structures you are analyzing. For the
16 neighborhood has a whole, the X number of homes within the
17 defined neighborhood, and I'm referring to Exhibit 4(f),
18 which is the neighborhood delineation map, you can see that
19 the majority of that, off of that neighborhood area off of
20 University Boulevard, is a homogenous composition of single
21 family detached homes on very small lots. Even though it's
22 R-60 zoned, many of these are 5,000 square foot lots.

23 And we're indicating through the analysis, those
24 lots along University Boulevard are larger and not
25 surprisingly have larger structures on them. So again, I

1 don't know how to definitively answer that.

2 MS. ROBESON: Okay.

3 THE WITNESS: It is not, it would be larger, but I
4 am confident, it would be larger than two times the size of
5 the average home for the entire neighborhood.

6 MS. ROBESON: Just give me one second.

7 (Discussion off the record.)

8 MS. ROBESON: This is exhibit, I'm going to mark
9 it as Exhibit 131. Mr. Leibowitz, do you want to, when you
10 have a chance, take a look at this prior to -- and can you
11 give one to Mr. Leibowitz. And Mr. Leibowitz, do you have a
12 client here that you want, I have an extra copy? Do you
13 want to give this to one of your clients so they can --

14 MR. LEIBOWITZ: Yes. Thank you. Thank you.

15 MS. ROBESON: All right. Go ahead.

16 THE WITNESS: Well, now that we have the graphic
17 data in front of us, is there anything else that one can
18 add? You can see --

19 MS. ROBESON: Well, I'm going to let Mr. Leibowitz
20 have a little time --

21 THE WITNESS: Okay.

22 MS. ROBESON: -- to absorb it. And then we'll get
23 into whether he has any objections, and whether I have any
24 questions.

25 THE WITNESS: Okay.

1 MS. ROBESON: Okay. So why don't you proceed?

2 THE WITNESS: So regarding the two times, it begs
3 the question which homes to compare and by what measure.
4 Utilizing SDAT I think is a flawed exercise, as I have
5 demonstrated.

6 The area does have some very small homes on the
7 interior of the neighborhood, on very small lots, again.
8 And those along University Boulevard are larger homes, are
9 larger lots and have larger homes. And again, you can't
10 ignore the 5,000, you know, well over 5,000 square foot
11 place of worship.

12 BY MS. MEAD:

13 Q In your testimony on Exhibit 96(h), did you
14 research whether any of the surrounding homes from the
15 property would be twice the size of -- twice the size of
16 those homes would be the same size as the proposed
17 structure?

18 A Well, the two story directly across the street,
19 again is --

20 MS. ROBESON: To the northeast.

21 THE WITNESS: Yes.

22 MS. ROBESON: Directly across University?

23 THE WITNESS: Yes. On lot 17 was, you know,
24 comparably sized, again, roughly measured at over 5,000 or,
25 I'm sorry, 4,000 square feet.

1 MS. ROBESON: The two structures combined.

2 THE WITNESS: Two structures combined.

3 BY MS. MEAD:

4 Q Are there two structures on one lot?

5 A Yes.

6 Q Are the two structures you're referring to on that
7 one lot, are they in the defined neighborhood?

8 A Yes. Let's see. And regardless of which lot to
9 use for quantitative comparison, if we did have accurate
10 information in order to try to elevate that to a development
11 standard, which we've done. I do agree with Scott's
12 conclusion that the massing, scale, and careful articulation
13 of the revised architecture is appropriately scaled and
14 designed for the context of this property.

15 MS. ROBESON: Why didn't this go to the -- I'm a
16 little concerned because of staff's -- why didn't this go to
17 the Planning Board?

18 THE WITNESS: I'm sorry, the information
19 regarding --

20 MS. ROBESON: No, why didn't it, why wasn't it
21 reviewed by the Planning Board?

22 THE WITNESS: Well --

23 MS. MEAD: I can respond to that.

24 MS. ROBESON: Well, okay, then we'll move on and
25 we'll stick with his testimony.

1 THE WITNESS: Well, we --

2 MS. ROBESON: If you know?

3 THE WITNESS: Well, until their, you know, the
4 recommendation of two times the size, we didn't analyze it
5 to a mathematical standpoint. We were analyzing character
6 and scale in more conventional and vocational practice of
7 visual assessment.

8 So many things need to be taken into account, the
9 orientation, setbacks, buffering, et cetera, and discussion
10 of --

11 MS. ROBESON: So you're saying, so the point is
12 that, in your opinion, you're saying that this meets the
13 Planning Board's recommendations?

14 THE WITNESS: Well, it certainly meets the master
15 plan's recommendation or appropriate size and scale.

16 MS. ROBESON: No, I mean the Planning Board. The
17 Planning Board.

18 THE WITNESS: The Planning Board, certainly it
19 responds to not only reducing the program --

20 MS. ROBESON: No, no.

21 THE WITNESS: -- and I think I understand. But
22 also to, also to reduce the size and scale of the building
23 regarding the two times, specifically?

24 MS. ROBESON: Yes.

25 THE WITNESS: Yes. Again, I don't have the

1 information to measure that accurately to make it
2 definitive. I would not contest, you know, an opinion that
3 it is more than two times the average size of every house
4 within the defined neighborhood.

5 MS. ROBESON: All right.

6 THE WITNESS: But, but --

7 BY MS. MEAD:

8 Q Does the Planning Board recommendation ask you to
9 look at the average size of every house in the defined
10 neighborhood, or does it --

11 A No.

12 Q What does the Planning Board recommendation say?

13 A Two times the size of the surrounding homes.

14 Q And is 219 University Boulevard a surrounding home
15 to the property?

16 A Yes.

17 Q And is the proposed structure 4,400 --

18 MS. ROBESON: Okay, you don't have to lead him. I
19 want to hear his opinion, okay.

20 THE WITNESS: Okay.

21 MS. ROBESON: So just --

22 THE WITNESS: So it is well below, you know, it's
23 comparable in size, not just --

24 MS. ROBESON: Yes.

25 THE WITNESS: -- less than two times the size of

1 219 University Boulevard.

2 MS. ROBESON: Okay.

3 THE WITNESS: It is well over two times the size
4 of the smaller adjoining house along Gilmoure.

5 MS. ROBESON: Okay. If you can find where you
6 were going to -- well, before I go on, Mr. Leibowitz, do you
7 have any objections to the admission of 131, which is the
8 aerial photograph of the house and site of the house and
9 dentist office?

10 MR. LEIBOWITZ: No.

11 MS. ROBESON: All right. That's admitted. Okay.
12 Now, that we've, Mr. Sekerak, you can proceed.

13 (Exhibit No. 131 was
14 admitted into evidence.)

15 THE WITNESS: And along that subject, and at the
16 risk of going to absurdity, this is a recorded lot, and a
17 single family home could be built on that lot immediately,
18 by right.

19 MR. LEIBOWITZ: I object to this. This argument
20 that a single family home, 20,000 square feet, or whatever
21 the calculation would be, that could be built there, has
22 already been -- it's irrelevant and been rejected by the
23 Planning Board. So I don't know that we need to hear more
24 testimony on it.

25 MS. MEAD: I don't see how what the Planning

1 Board, how they objected to --

2 THE WITNESS: I don't recall that.

3 MS. ROBESON: Well, I understand what you're
4 saying, but he is an expert. He can testify as to
5 hypotheticals. I'm going to let him testify as to this.
6 But I don't want to get too much into all --

7 THE WITNESS: Understood.

8 MS. ROBESON: I had one case recently where they
9 had a parade of horrors of everything that the R-60 zone
10 might permit. So I'll let you some leeway here.

11 THE WITNESS: And I don't want to approach
12 horrors. I agree. And I did preface it, I said, I don't
13 want to get into the absurdities.

14 MS. ROBESON: That's right.

15 THE WITNESS: But by right, it could be over
16 30,000 --

17 MS. ROBESON: How much? Yes.

18 THE WITNESS: Over 30,000 square foot. We're not
19 suggesting that, but certainly with, you know, that much
20 leeway, a structure much larger than what we are proposing
21 at two and a half stories and only eight feet away from the
22 adjoining residential lot line, could easily be imagined.
23 I'm not suggesting a 33,000 square foot home.

24 MS. ROBESON: Right. Now, are you the person to
25 ask, I did have a question about the setback from the

1 smaller house adjoining, confronting Gilmoure. This is a
2 corner lot, right?

3 THE WITNESS: Yes. It has three frontages,
4 actually. It's somewhat unusual in that sense.

5 MS. ROBESON: Okay. So you're saying, what are
6 you saying the mandatory setback is?

7 THE WITNESS: Eight feet.

8 MS. ROBESON: And is that a rear yard setback? Is
9 that a side yard setback? What is that?

10 THE WITNESS: Because of the nature of this, of
11 this three lots, this lot does not have a rear yard. And
12 the site plan for special exception, I'm sorry --

13 MS. MEAD: 96(a).

14 THE WITNESS: -- clearly shows the building
15 restriction lines --

16 MS. ROBESON: Okay.

17 THE WITNESS: -- delineated on that plan.

18 MS. ROBESON: So are you treating, where do you
19 get the eight feet? Is that the side yard setback?

20 THE WITNESS: Correct. The minimum, the
21 development standard for a building on this lot is eight
22 feet along that eastern property line.

23 MS. ROBESON: And how far away is the building?

24 THE WITNESS: It's, from the closest point, which
25 is adjoining the lot fronting on University Boulevard, is 22

1 feet, as compared to the eight foot minimum. The, and the
2 home on that lot is set back considerably.

3 MS. ROBESON: Well what about the smaller house?

4 THE WITNESS: Okay. So the smaller home, which is
5 on lot 9, fronting on Gilmore, is set back to that property
6 line, is approximately 32 feet. So --

7 MS. ROBESON: Okay.

8 THE WITNESS: -- four times the side yard setback.
9 It's an irregular property line along there, but it varies.
10 But as I'll get into later, the building was positioned
11 there very intentionally and articulated with a narrow side
12 towards Gilmore. The facade articulation along that side,
13 it makes it very compatible in terms of scale, setbacks,
14 buffers, et cetera, with that very home.

15 BY MS. MEAD:

16 Q Mr. Sekerak, now that we have Exhibit 131 in the
17 record, if you could just, please, describe your analysis
18 with respect to the previous structure on the property?

19 A Again, it had a footprint of, what we measure from
20 the Montgomery County GIS information that you have a
21 printout of, is 3,325 square feet. It also had a shed on
22 the property, so a total enclosed area of 3,455. We do not
23 have a measure for the second story, but visual observations
24 and all that, it did exist.

25 If only a little over a quarter of that footprint

1 was a second story, then the GFA of the previous office/home
2 would be the same size as the proposed structure.

3 MS. ROBESON: Okay.

4 THE WITNESS: Again, not precise measurements.

5 MS. ROBESON: I understand.

6 THE WITNESS: But when it comes to compatibility,
7 size and scale, again, it's not a mathematical exercise and
8 it --

9 MS. ROBESON: Mr. Sekerak, what is the master plan
10 language that the Planning Board was referring to?

11 THE WITNESS: On page 26 of the 1996 Four Corners
12 master plan, second to last paragraph, and the sentence
13 reads, if a use requires a new building, the plan encourages
14 designs that are residential in character and scale. Period.
15 And again, testimony both subjectively and objectively, I
16 conclude that it certainly meets that master plan
17 recommendation.

18 BY MS. MEAD:

19 Q Does the master plan refer to size of the
20 structure?

21 A No, it does not.

22 Q Does the master plan refer to the surrounding
23 homes, as far as the character and scale?

24 A No, it does not, but special exception standards,
25 as you are very aware, do have that, that there is no

1 specific discussion of that in the Four Corners master plan.

2 Q Are there other master plans with language that
3 would require adherence to size of neighboring structures?

4 A None that I'm aware of that would quantify it, but
5 yes, it would not be uncommon for master plans. And I'll
6 read some examples.

7 Q You have let us know what your example is?

8 A Yes. The 1990 Bethesda-Chevy Chase master plan --

9 Q I'd like to admit the excerpts into the record?

10 MS. ROBESON: Mr. Leibowitz?

11 MR. LEIBOWITZ: Can I just take a minute?

12 THE WITNESS: And I'll do a number of citations
13 here. I'll do them in chronological order.

14 MS. ROBESON: Well, wait until I know whether he
15 -- Mr. Leibowitz, do you have an objection to this coming
16 in?

17 MR. LEIBOWITZ: I don't know why it's relevant
18 what the master plan for Bethesda-Chevy Chase is.

19 MS. ROBESON: Ms. Mead, do you want to address
20 that?

21 MS. MEAD: We're addressing it, as Mr. Sekerak
22 will testify to, as far as master plan language, specificity
23 as far as what they refer to as far as character and scale,
24 whether they mean size or not. And that the counsel had
25 such tools and used such language when it felt it was

1 necessary.

2 MS. ROBESON: Okay. I'll overrule the objection
3 as to relevance. I will mark, admit it as Exhibit 132,
4 excerpts -- which plan is this?

5 (Exhibit No. 132 was
6 marked for identification and
7 admitted into evidence.)

8 MS. MEAD: Bethesda-Chevy Chase.

9 THE WITNESS: 1990, Bethesda-Chevy Chase.

10 MS. ROBESON: Okay. Go ahead.

11 THE WITNESS: Let's see. Paragraph 3(a) on page
12 31 of that master plan, indicates that any modification or
13 addition to an existing building to accommodate a special
14 exception use should be compatible with the architecture of
15 the adjoining neighborhood, and should not be significantly
16 larger than nearby structures.

17 In that master plan, it seemed to more approach
18 the Planning Board's specific recommendation of direct
19 quantitative comparison to nearby structures.

20 Very similarly, the 1992 North Bethesda/Garrett
21 Park master plan --

22 MR. LEIBOWITZ: Same objection.

23 MS. MEAD: Same response.

24 MS. ROBESON: Okay. I'm going to admit it.

25 Exhibit 133. Can you tell me again, one minute, okay, North

1 Bethesda/Garrett Park master plan excerpt. Okay. You can
2 continue.

3 (Exhibit No. 133 was
4 marked for identification and
5 admitted into evidence.)

6 THE WITNESS: Page 38 has the same language in
7 there. Any modification or addition to an existing building
8 to accommodate a special exception use should be compatible
9 with the architecture of the adjoining neighborhood and
10 should not be significantly larger than nearby structures.

11 MS. ROBESON: Okay.

12 THE WITNESS: Okay. 1994 Aspen Hill master plan.

13 MS. ROBESON: And that will be 134.

14 Mr. Leibowitz?

15 MR. LEIBOWITZ: Same objection. Same ruling.

16 MS. ROBESON: We'll admit it. And this, which
17 master plan is this?

18 (Exhibit No. 134 was
19 marked for identification and
20 admitted into evidence.)

21 THE WITNESS: 1994 Aspen Hill.

22 MS. ROBESON: Okay. Excerpts from the 1994 Aspen
23 Hill master plan.

24 THE WITNESS: And if you could, I'm sorry, did I
25 indicate it was the same language in that one.

1 MS. ROBESON: Yes.

2 THE WITNESS: Yes, okay. Then comes the 1996 Four
3 Corners master plan that previously indicated, the plan
4 encourages designs that are residential in character and
5 scale, period.

6 MS. ROBESON: Which one is that?

7 THE WITNESS: That's the adopted and approved
8 master plan for the subject property, in 1996, Four Corners.

9 MS. ROBESON: Okay. Now I'm missing your point
10 here.

11 THE WITNESS: Okay.

12 MS. ROBESON: Because I thought your point was if
13 the master plan felt that it needed to quantify the specific
14 area, it would have said so. But none of these quantify the
15 specific square footage.

16 THE WITNESS: I have one last reference, citation.

17 MS. ROBESON: All right. You've got one that
18 quantifies it.

19 THE WITNESS: No, I do not, but I'll make that
20 comparison.

21 MS. ROBESON: Okay. You'll answer the question.

22 THE WITNESS: And the last one is 1997 Cloverly
23 master plan. So this is one after the '94 --

24 MS. ROBESON: Okay. Mr. Leibowitz, is this your
25 continuing objection?

1 MR. LEIBOWITZ: Yes.

2 MS. ROBESON: Okay. This is Exhibit 135, excerpt
3 from the 1981 Cloverly master plan.

4 (Exhibit No. 135 was
5 marked for identification and
6 admitted into evidence.)

7 THE WITNESS: 1997 Cloverly.

8 MS. MEAD: 1997. It's in the corner of the first
9 page.

10 MS. ROBESON: Oh, an amendment to the --

11 MS. MEAD: Yes.

12 MS. ROBESON: I'm sorry. 1997 Cloverly. All
13 right.

14 THE WITNESS: And again, I cited those
15 chronologically. And this is one subsequent to the Four
16 Corners master plan for the subject property. This one
17 states that compatibility with the scale and architecture of
18 the adjoining neighborhood, consistent with the proposed
19 use.

20 MS. ROBESON: Okay. What's the year?

21 THE WITNESS: I'm sorry. That's on page 37.

22 MS. ROBESON: Okay. Okay. Continue.

23 THE WITNESS: More specifically, the purpose of
24 this is to contrast what the District Council was making
25 specific recommendations in master plans for special

1 exceptions. They have the tools available to them, when
2 they felt appropriate, to, you know, specifically reference
3 the adjoining, directly adjoining neighborhood.

4 That is a reference that is not included in the
5 1996 Four Corners master plan. It simply encourages designs
6 that are residential in character and scale. So that, I
7 don't want that master plan recommendation to be elevated
8 higher than what the master plan's clear language states.

9 MS. ROBESON: Despite the Planning Board's
10 interpretation of it.

11 THE WITNESS: Exactly.

12 MS. ROBESON: Because it seems to me the Planning
13 Board was interpreting it as these plans.

14 THE WITNESS: They may have been very accustomed
15 to that language in master plans.

16 MS. ROBESON: But we won't know, because it's not
17 going back to the Planning Board.

18 THE WITNESS: And that is language that is not
19 included in this master plan. Okay.

20 BY MS. MEAD:

21 Q Now that we've described the size of the building,
22 if you could explain the background of the proposed revised
23 layout of the building?

24 A Well, collaboration with the other members of the
25 project team, we developed alternatives in layout and

1 architecture. We met with technical staff. We met with the
2 neighbors. We assimilated the feedback from all that, and
3 again, the info results in the plans before you.

4 The reduced building size not only simply reducing
5 the size and scale of it, it did -- and the reduction of the
6 program, it gave us many more options that were not
7 available to us before, in terms of layout and building
8 articulation. We are able to be very flexible and provide a
9 number of good options.

10 The previous plans were good designs also. But
11 now we're able to provide additional good options, and it
12 allows us to be very accommodating to the preferences of
13 technical staff and the input received from the community.

14 So we've provided a number of alternatives on
15 conceptual layouts and elevations. And that informed us on
16 the style of building, roof type, building location,
17 orientation, play area location, access, et cetera. And I
18 can go right into describing the new layout at this point.

19 The daycare center building is now located more
20 along Gilmore. If you recall from the previous layout, it
21 was the parking lot that paralleled Gilmore. So now we're
22 able to put the proposed structure along Gilmore. And it's
23 the narrow end of that structure.

24 The longer end, side of that facade is set back
25 well over 100 feet from Brunett Avenue. And again, that

1 reduced size and the narrow facade oriented towards the
2 Gilmore Street, it has a similar setback to Gilmore, as
3 does the other homes in the, along Gilmore. I'll put
4 Exhibit 99@ back up here, the illustrative. You see the
5 cadence of those homes in terms of similar setbacks and
6 comparable widths as the streetscape evolves.

7 MS. ROBESON: What's the length of that? I know
8 that north is the diagonal. I guess it's southwest side of
9 the -- the facade confronting Gilmore?

10 THE WITNESS: Sorry. Measuring 54 feet.

11 MS. ROBESON: And do you have any information on
12 the front facades of, for instance, the houses to the south
13 of Gilmore, or the southwest of Gilmore?

14 THE WITNESS: Across Gilmore, confronting
15 properties, the larger ones at the intersection of Gilmore
16 and Brunett is measuring 61 feet.

17 MS. ROBESON: Okay.

18 THE WITNESS: So again, there are homes along that
19 streetscape that are narrower. There are homes that are
20 larger, wider.

21 MS. ROBESON: Okay.

22 THE WITNESS: The play area is located to the
23 north of the building, between the building and University
24 Boulevard. It's, with the reduced program, it's a
25 generously sized play area for the kids, for a limited

1 number of kids at this point.

2 The reduced program also allows vehicular access
3 to be used through just one driveway, and that's located
4 along Gilmoure. Again, access from University Boulevard
5 comes along Brunett Avenue, and can quickly enter into the
6 site with little disruption to the general neighborhood.
7 It's just zip around the corner and you're in the property.

8 The one driveway entrance also preserves 100
9 percent of the on-street parking that exists now. And that
10 was very valued by the residents.

11 The parking area has a new orientation. It's
12 north/south along Brunett Avenue. This is very similar to
13 the parking lot right across the street that serves the
14 place of worship, but in contrast, it is smaller than that,
15 the place of worship parking lot, and it has considerably
16 more setbacks than that parking lot.

17 That was an orientation specifically recommended
18 by Planning Board member Dreyfus, and also, it was, again,
19 the preference for the neighbors when we met with them, on
20 the alternatives that we provided.

21 And also in response to the neighbor's preference,
22 we are not seeking a waiver of any parking spaces. We were
23 comfortable before that we would not be imposing on the on-
24 street parking available right along the frontage and in the
25 neighborhood. But certainly now with this waiver that's

1 typically applied for with daycare centers, the waiver of
2 the current zoning ordinance ratios, and although we're
3 extremely comfortable that this parking lot will never be
4 full, and easy access for the users.

5 The proposed pedestrian conditions remain as they
6 were before, but much improved over existing conditions. We
7 are reconstructing the sidewalks along University Boulevard
8 and Brunett, and creating a new sidewalk along Gilmoure
9 where none currently exists. And we're providing lead walks
10 from that surrounding pedestrian system, right to the front
11 door of the proposed facility.

12 So we dearly hope that many of the surrounding
13 residents will utilize the daycare center and be able to
14 walk, from either nearby residents, or the bus stop that is
15 just across Brunett Avenue along University Boulevard.

16 The new layout has a whole different relationship
17 to the traveling public, so the main sign is no longer
18 integral to the fencing at the corner of University
19 Boulevard and Brunett, as it was before. It's a more
20 conventional freestanding and smaller sign than what had
21 been previously proposed, a much more traditional design.
22 And the elimination of one of the driveway curb cuts also
23 eliminates the need of an additional way finding sign.

24 So if you recall, we had three signs proposed
25 before, the identification sign, just identifying the use

1 and property along University Boulevard, but we also had two
2 way finding signs regarding being able to circulate folks
3 into the thing. So with one less driveway, there will be
4 just one two square foot sign at single driveway.

5 Landscape treatments remain generous with the
6 addition of street trees, internal shade trees, and shrub
7 buffers. The previously proposed six foot board-on-board
8 fence along the eastern property line adjoining the other
9 residence, that remains.

10 And that six foot fence, along with the shade
11 trees proposed along that common property line that would be
12 branching out at six feet and above, well, you can just
13 imagine how effective of a buffer that would be between
14 those adjoining residences and a single story building next
15 door to it.

16 BY MS. MEAD:

17 Q In your opinion, have these revisions
18 substantially reduced the size and scale of the building in
19 use?

20 A Yes. Quantitatively, 20 percent from the previous
21 building, 32 percent from the initial application, and the
22 new lot coverage is down to only 12 percent of the lot, an
23 extremely low lot coverage, 35 percent being permitted in
24 the R-60 zone.

25 But in addition, you know, the appearances,

1 greater articulation, break up of the roof, similar
2 treatments, I'll leave the more detailed description of that
3 to the architect who will follow with testimony in that
4 regard. But it's a very well articulated architecture. And
5 I will anticipate her a bit by bringing up her elevations.
6 And the new elevations.

7 Q 96(b).

8 MS. ROBESON: Can you mark that as a duplicate,
9 please?

10 THE WITNESS: You can see the articulation to the
11 roof line, et cetera, but particularly along, I'll point
12 out, the Gilmore Drive elevation. It's extremely single
13 family residential in character.

14 BY MS. MEAD:

15 Q In your opinion, is the revised plan consistent
16 with the recommendations of the master plan for residential
17 character and scale?

18 A Yes, as did the previous scheme, but now even more
19 so with the reduction of both the size and scale of the
20 building itself, and the program. Again, I can't emphasize
21 enough that the ability of options with the reduced size,
22 that we are able to offer many different layouts. And so,
23 again, we were very accommodating regarding the preferences
24 of the neighbors and staff.

25 And a 4,400 square foot one-story building is

1 easily residential in character and scale, and especially as
2 it's been as carefully designed as it has been here.

3 Q And in your opinion, is the revised special
4 exception consistent with the Planning Board's
5 recommendation for, to limit the size to twice the size of
6 the surrounding homes?

7 A Again, I can't quantify that in a mathematical
8 aspect, but easily looking at surrounding structures --

9 MS. ROBESON: And you're referring to the homes
10 across University, the religious facility to the northwest
11 and --

12 THE WITNESS: Yes. And --

13 MS. ROBESON: -- the adjoining confronting to the
14 southeast, facing University, and then the dwelling
15 immediately south or southwest --

16 THE WITNESS: To the northeast.

17 MS. ROBESON: Northeast?

18 THE WITNESS: Northeast, facing University.

19 MS. ROBESON: Okay.

20 THE WITNESS: And the corner lot confronting.

21 MS. ROBESON: On Gilmoure and Brunett.

22 THE WITNESS: And Brunett, yes.

23 MS. ROBESON: Directly south.

24 THE WITNESS: Yes.

25 MS. ROBESON: Across to the south.

1 THE WITNESS: All those, taking into
2 consideration, it is certainly within that, to that context.

3 BY MS. MEAD:

4 Q In your opinion, is the revised plan consistent
5 with the Planning Board's recommendation to carefully
6 articulate the structure to appear residential in scale and
7 character?

8 A Yes. Yes. And again, I don't mean to steal any
9 thunder from Jane, who will be describing the architecture
10 more thoroughly, but I did put up the elevations in showing
11 them, and you can see the articulation. It's very
12 residential in character and scale, a very attractively
13 designed building, and very effective in its treatment, and
14 again, especially from the Gilmoure Drive elevation where it
15 is, in terms of the size, scale, you know, the treatments,
16 it's relationship to the street similar to the other homes
17 along that street.

18 Q Thank you. And this may be repetitive, as
19 special exception requirements are, but in your opinion, is
20 the revised proposal in harmony with, and compatible with
21 the surrounding neighborhood?

22 A Absolutely, as I previously testified, this
23 property is in a unique position. It has three frontages on
24 streets, one of which is along a major highway. To be able
25 to access a daycare center site so readily from a major

1 transportation element like that, vehicularly or by
2 pedestrians or by bus, it's a wonderful site for the special
3 exception.

4 Q In your opinion, will the revised special
5 exception be detrimental to the use, peaceful enjoyment,
6 economic value, or development of the surrounding properties
7 or the general neighborhood?

8 A It will not be detrimental and to the contrary, I
9 concur with the master plan recognition in numerous
10 locations where daycare is a community serving use, and to
11 be located in neighborhoods. Again, the ability of this to
12 be within the residential neighborhood yet easily accessed
13 from major highway makes this such a unique and beneficial
14 site for it.

15 The master plan makes specific, repeated specific
16 reference to daycare as a contributing element of the
17 neighborhood. Pages 12, 14, and 55.

18 MS. ROBESON: What about its discouragement of
19 commercial uses?

20 THE WITNESS: In some locations. At the time of
21 the master plan it was written, again, it identified this
22 property as an office use, and proposed it as an office use.

23 MS. ROBESON: Is that on the proposed land use
24 map?

25 THE WITNESS: Yes. Yes. And it also, as I

1 previously testified, across University Boulevard, at that
2 point there was a significant school 225, which included a
3 225 child daycare. That was all, it was not operating at
4 that time, but it certainly recognized it as the use for
5 that property, and identified it as appropriate to continue
6 if a new operator came along.

7 So between the previous use for this property, and
8 the use, you know, right across the street within this
9 neighborhood, this actually reintroduces just a small
10 measure of those community-serving uses, to this
11 neighborhood.

12 The master plan did not -- well, I don't want to
13 overstate what it did or did not intend, but I'm confident,
14 did not intend for the neighborhood to revert to a
15 homogenous single-family detached homes. So a modest 76
16 child center, again, just brings back a small measure of the
17 conditions at the time of the 1996 Four Corners master plan.
18 And it fits very well within the neighborhood, and it will
19 be asset to the community, not, certainly not detrimental.

20 MS. MEAD: I have no further questions for
21 Mr. Sekerak.

22 MS. ROBESON: Mr. Leibowitz.

23 MR. LEIBOWITZ: Yes.

24 CROSS-EXAMINATION

25 BY MR. LEIBOWITZ:

1 Q I want to start with the excerpts of the master
2 plans from other neighborhoods, okay.

3 MS. ROBESON: Can you identify, for the record,
4 which one you're specifically referring to or which master
5 plan?

6 MR. LEIBOWITZ: Absolutely. I just wanted to
7 frame what we were talking about.

8 MS. ROBESON: Exactly. That's fine.

9 BY MR. LEIBOWITZ:

10 Q In Exhibit 132, the Bethesda-Chevy Chase master
11 plan, the language you stated refers to modifications or
12 additions to existing buildings, right?

13 A That's the -- yes, that's in the sentence,
14 correct.

15 Q But it does not apply to new construction,
16 correct?

17 A It does not address new construction. It would
18 just infer that new construction would be, since it isn't
19 referred to specifically, that it would be going by the same
20 standard.

21 Q Because --

22 A It certainly wouldn't be --

23 Q I'm sorry.

24 A Yes.

25 Q Because it's not referred to in this sentence,

1 then you assume that it doesn't apply?

2 A That they would be looking for a similar standard
3 for special exceptions, whether it's a new structure or --

4 Q Do you know off the top of your head how many --

5 A If it --

6 Q Let me just --

7 A Okay. Go ahead. Sorry.

8 Q Do you know, off the top of your head, roughly how
9 many pages the Bethesda-Chevy Chase master plan for 1990 is?

10 A No. I don't know pages. I do know the landscape
11 format book, about an inch thick.

12 Q About an inch thick?

13 A Yes.

14 Q And is it fair to say that in that inch of pages,
15 there are other provisions that deal with special
16 exceptions?

17 A Oh, sure.

18 Q Okay. And deal with special exceptions that are
19 new construction?

20 A I don't recall coming across specific language
21 regarding new construction of special exceptions in that
22 master plan.

23 Q Okay. All right. Well, let's look at the end of
24 this sentence, that the -- should not be significantly
25 larger than nearby structures.

1 A Yes.

2 Q Okay. Would you agree with me that 413 Gilmore
3 is the nearest structure to the proposed development?

4 A Yes.

5 Q Would you also agree that the proposed development
6 is significantly larger than 413 Gilmore?

7 A The buildings? Yes. The lots and the buildings,
8 yes.

9 Q Let's look at Exhibit 133, North Bethesda/Garrett
10 Park master plan. Okay. How thick is that master plan?

11 A Also thick.

12 Q Thick. Like an inch thick, more than an inch
13 thick?

14 A I'll estimate less than an inch thick.

15 Q Okay.

16 A But, let's see, thicker than Four Corners,
17 comparable to Bethesda-Chevy Chase.

18 Q Okay. And again, this is one page from that --

19 A Yes.

20 Q -- inch of document?

21 A Yes.

22 Q And this excerpt also refers to modifications or
23 additions to existing buildings?

24 A It's the same language.

25 Q Okay. So your answers would be the same. If I

1 asked you the same questions --

2 A Yes.

3 Q -- your answers would be the same in regard to
4 this one?

5 A Correct. I agree.

6 Q Okay. Let's look at Exhibit 134, master plan,
7 Aspen Hill master plan, 1994. How thick is this master
8 plan?

9 A Similarly, similarly --

10 Q Similarly thick?

11 A -- sized. Yes.

12 Q Okay. And this is, again, the same language from
13 the previous two exhibits?

14 A Correct.

15 Q And if I asked you the same questions, you'd give
16 me the same answers?

17 A Correct.

18 Q Okay. And then the Exhibit 135, the Cloverly
19 master plan, how thick a plan is that?

20 A That's more comparable to the Four Corners master
21 plan.

22 Q Okay.

23 A Not as thick as the previous three that we've
24 mentioned.

25 Q And again, this is one page from --

1 A Correct. Regardless of the size, it is one page.

2 Q Okay. And unlike the Four Corners master plan
3 that has specific recommendations for a new building, this
4 is not a reference to a new building. This is generally for
5 special exceptions?

6 A Correct.

7 Q Let's talk about the -- let's talk about the
8 building that was there before Mr. Kay's company razed it.

9 A Uh-huh.

10 Q Did you ever personally see that building?

11 A Not that I recall. Now, I've driven by there a
12 number of times. I probably have seen it. But I have no
13 personal recollection of the specific building.

14 Q You obviously were never in the building, then?

15 A I was never in the building.

16 Q So you don't have any personal knowledge of
17 whether it was one story or two stories, based on your own
18 observations?

19 A No, I had observed aerial, bird's eye aerial
20 photographs, similar to the exhibits that we had discussed
21 earlier regarding the identifying the second story of the
22 homes across University Boulevard. I had observed those
23 similar aerial photographs for this subject property at a
24 time when they did show the existing structure, or
25 previously existing structure.

1 Q Okay. Well, let's --

2 A And I have a specific recollection of a second
3 story on them.

4 Q Well, let's talk about those aerial photographs,
5 okay? The portions of the previous building had a pitched
6 roof?

7 A Yes. It -- yes.

8 Q And portions of the previous building may have had
9 a window in the upside down V portion of the pitched roof?

10 A In the gable ends?

11 Q In the gable.

12 A Uh-huh.

13 Q Is that correct?

14 A I don't have that specific of a recollection that,
15 of windows relative to the gables.

16 Q All right. And if that were the case, is that
17 what would have led you to believe, based on the picture,
18 that there were two stories?

19 A Well, two items, just visual observations from
20 those photos, it was obvious to me that there was a second
21 story. And the secondly, conversations with the applicant,
22 who was inside the building, that indicated that yes, there
23 was a stairway to a second floor, confirmed that it wasn't a
24 faux second story.

25 Q And for example, the proposed building, and we can

1 refer to Exhibit 96(b), that's there, is that an example of
2 a faux second story?

3 A That's an example of just dormer treatments, gable
4 end treatments and dormer treatments on a single story
5 structure. I'm able to recognize with, through my
6 experience, you know, when something like that. If so
7 indicated, if there was a stairway in there, under that
8 roof, there could be a half story type of thing. Could be.
9 But it's obviously a one-story building.

10 Q Looking at an aerial photograph, one could look at
11 a building like the proposed building and think that it had
12 two stories. And it, in fact, would only be one.

13 A To be clear, I'm not talking the straight over,
14 over aerial photograph. We are talking about the bird's eye
15 view, off to the side from four different angles, is how we
16 made that determination.

17 Q Okay, but that didn't answer my question.

18 A Okay.

19 Q Let me ask it again.

20 A I'm sorry.

21 Q Looking at the type of photograph that you've just
22 described, one might think that there were two stories,
23 based on the architecture, when there may only be one. Is
24 that correct?

25 MS. MEAD: I'm going to object. This has been

1 asked and answered. Mr. Sekerak has already opined that in
2 his experience, that he knows the difference between a one
3 story and a two story structure, from the appearance.

4 MS. ROBESON: Well, I guess the iteration is, and
5 I have a question too. When you look at the -- I think what
6 Mr. Leibowitz is asking, or attempting to get to is, is it
7 possible that there was a space there that looked like a
8 second floor that could not, may not have been a second
9 floor?

10 THE WITNESS: Yes.

11 MS. ROBESON: Is that --

12 MR. LEIBOWITZ: Yes.

13 THE WITNESS: It could have been designed to have
14 that appearance without actually constructing it to the
15 interior. Don't ask me why they would have put a stairway
16 in there, but yes, that is possible.

17 BY MR. LEIBOWITZ:

18 Q If one had a large attic, would -- is that a
19 reason for somebody to put a staircase to reach this?

20 A And if it had sufficient headroom, it would be
21 another story, yes.

22 MS. ROBESON: You mean it would be part of the
23 calculation of floor area --

24 THE WITNESS: Yes.

25 MS. ROBESON: -- if it had a high enough ceiling?

1 THE WITNESS: Yes. If it had access in and out of
2 it, and six feet six inch, I believe -- I'm sorry, I don't
3 recall the building code precisely, but of headroom, that
4 area would be included in the floor area.

5 MS. ROBESON: It has to be under -- well, I can't
6 remember.

7 THE WITNESS: Yes.

8 MS. ROBESON: Under 70, around six feet.

9 THE WITNESS: Yes. Six feet or six feet six. One
10 of those two.

11 MS. ROBESON: Six feet six.

12 THE WITNESS: One of those two, I believe.

13 BY MR. LEIBOWITZ:

14 Q But you don't know, one way or the other, what
15 this -- whether there was an attic, how tall it was, or any
16 of those things?

17 A Absolutely not. I hope I qualified my, the
18 qualifications of my measurements appropriately. We are
19 dealing with --

20 MS. ROBESON: Yes.

21 THE WITNESS: -- course GIS information and
22 observations of aerial photographs.

23 BY MR. LEIBOWITZ:

24 Q Okay.

25 A So I don't disagree with your confirming that

1 qualification.

2 Q Okay. I want to talk about the buildings, the
3 houses across the street at 219 University Boulevard.

4 MS. ROBESON: When you say across the street, you
5 mean across University Boulevard?

6 MR. LEIBOWITZ: Across University Boulevard.

7 MS. ROBESON: All right.

8 BY MR. LEIBOWITZ:

9 Q At 219 University Boulevard. Now, that is there
10 are two structures on that lot, is that correct?

11 A Yes. Yes. They are close together, but they are
12 separate structures.

13 Q Okay. And it's possible for an unscrupulous
14 homeowner and builder to build a second structure without
15 getting a permit, is that correct? Right?

16 A Yes.

17 Q And that would be a reason that the SDAT records
18 aren't accurate, is that correct?

19 A That could be an explanation, yes.

20 Q Okay. And if there were somebody operating an
21 illegal restaurant on that property, would that be a reason
22 that there might be an unlicensed or, I'm sorry, unpermitted
23 second building?

24 A I don't know how the use really effects it. Yes,
25 there could be a second building that was not built with the

1 benefit of a building permit.

2 Q Would you be surprised to learn that the owners of
3 that property have been investigated and cited for operating
4 an unlicensed restaurant?

5 MS. MEAD: Relevance to the size of the structure?

6 MS. ROBESON: I think what he's getting at is that
7 you can't use that for comparison if it's not permitted in
8 the zone, because it's not permitted. It's not compatible
9 with the R-60 zone, because it's in violation of what may
10 occur in the R-60 zone.

11 THE WITNESS: And I wouldn't disagree at all with
12 that.

13 MS. ROBESON: I'm guessing. Is that your point?

14 MR. LEIBOWITZ: Yes.

15 THE WITNESS: All right. Yes. I wouldn't
16 disagree with that at all regarding the use.

17 MR. LEIBOWITZ: Okay.

18 THE WITNESS: However, the structures are well
19 within the development standards of the R-60 zone.

20 MS. ROBESON: Well, can you have two homes on one
21 lot?

22 THE WITNESS: Not for two different families. But
23 certainly, you can have two structures.

24 MS. ROBESON: Does it meet the accessory use
25 requirements?

1 THE WITNESS: Again, regarding the use --

2 MS. ROBESON: Because it doesn't look accessory to
3 me.

4 THE WITNESS: Yes, I -- you know, it's in the rear
5 yard. I do not know what the use of it is, but --

6 MR. LEIBOWITZ: Well, I don't know the exhibit
7 we're up to, 130 --

8 MS. ROBESON: 136, I think. What is this,
9 Mr. Leibowitz?

10 MR. LEIBOWITZ: This is a report from Montgomery
11 County.

12 MS. ROBESON: This looks like -- go ahead.

13 MR. LEIBOWITZ: This is a, from the top,
14 Montgomery County Department of Housing Code Enforcement.
15 The report of a complaint at 219 University Boulevard.

16 MS. ROBESON: Okay. So DPS report on 219 West
17 University. That will be 136. Ms. Mead, do you have any
18 objections?

19 MS. MEAD: No, not to the admission of it.

20 (Exhibit No. 136 was
21 marked for identification and
22 admitted into evidence.)

23 BY MR. LEIBOWITZ:

24 Q And if you -- I may have given you that. Let me
25 just check if it's the same thing.

1 A Sure.

2 MS. MEAD: From September 25th, 2010?

3 MR. LEIBOWITZ: Did I give --

4 MS. ROBESON: Wait. What is 9/25?

5 MR. LEIBOWITZ: I just wanted to make sure I gave
6 you guys the same document, rather than two --

7 MS. ROBESON: And where is the date you're reading
8 from?

9 MR. LEIBOWITZ: -- rather than two different
10 documents.

11 MS. ROBESON: I see. The resolution. No, I have
12 a different document. I have a 2008.

13 MR. LEIBOWITZ: I'm sorry. Let me mark, let me do
14 it chronologically. What I'm handing out now, I apologize.

15 MS. ROBESON: That's fine.

16 MR. LEIBOWITZ: I thought I had three copies, but
17 there may have been an oversight on this. I may have had an
18 oversight on this exhibit, that I didn't make, I didn't have
19 three copies.

20 MS. ROBESON: Okay. Can you guys hold on?

21 MR. LEIBOWITZ: Yes.

22 MS. ROBESON: Let me, do you have another exhibit?
23 I have something from 2008. Do you have a 2010?

24 MR. LEIBOWITZ: This is 2010.

25 MS. MEAD: Yes.

1 MS. ROBESON: Do you want to admit the 2008 or
2 just the 2010?

3 MR. LEIBOWITZ: I'd like to admit both.

4 MS. ROBESON: Okay.

5 MR. LEIBOWITZ: And in fact, I have a third that's
6 also from 2010.

7 MS. ROBESON: Okay. I'll tell you what, if you --
8 we're going to hold for two minutes, if you can hold for two
9 minutes.

10 MR. LEIBOWITZ: I can hold for two minutes.

11 MS. ROBESON: And nobody leave. I'll be right
12 back.

13 (Whereupon, at 11:19 a.m., a brief recess was
14 taken.)

15 MS. ROBESON: Okay. We are going to take a break
16 at noon for a half hour for lunch. So if you can plan your
17 stomachs accordingly, we're going to try and get through as
18 much as we can. Okay. Go ahead.

19 BY MR. LEIBOWITZ:

20 Q In any event, you would agree that there are two
21 buildings at 219 West University Boulevard?

22 A Yes. Yes.

23 Q And that the proposed development that we're here
24 for today is one building?

25 A Yes.

1 Q Let's kind of shift our attention briefly --

2 MS. ROBESON: The exhibits are coming around.

3 MR. LEIBOWITZ: Okay. We can go back to that.

4 All right. We're going to stay at 219 University Boulevard,
5 because the exhibits are here.

6 MS. ROBESON: Now, I have the originals, so I will
7 mark them as you go on.

8 MR. LEIBOWITZ: So the one that's dated at the
9 top, September 9th, 2008, I'll mark this Exhibit 136.

10 MS. ROBESON: That's the SR date.

11 MR. LEIBOWITZ: That's the SR date.

12 MS. ROBESON: Okay. So that will be 136. Any
13 objection?

14 THE WITNESS: I'm sorry. September 8th, you said?

15 MS. ROBESON: I'm sorry. Yes.

16 BY MR. LEIBOWITZ:

17 Q September 9. September 9, 2008.

18 A Yes.

19 MS. ROBESON: 136, 2008 DPS report from 219 West
20 University.

21 THE WITNESS: Exhibit what?

22 MS. ROBESON: 136.

23 THE WITNESS: 136. Thank you.

24 MS. ROBESON: And just for reference, the second
25 one will be 5/27, and that will be 137. And then the 9/25

1 will be 138. Now, that doesn't mean that --

2 (Exhibit No. 137-138 were
3 marked for identification and
4 admitted into evidence.)

5 THE WITNESS: I'm sorry. I had already marked
6 them in the upper right hand corner of what you just
7 designated as 138. And that had been --

8 MS. ROBESON: I have the originals.

9 THE WITNESS: Okay. But what had been copied and
10 given back to us, shows an Exhibit 136 in the upper right
11 hand corner of what you just designated as Exhibit 138.

12 MS. MEAD: So we should cross that out.

13 MS. ROBESON: I'm sorry.

14 THE WITNESS: I just want to bring that to anybody
15 who got a copy.

16 MS. ROBESON: Okay. I understand. Okay.

17 MS. MEAD: After reviewing these, our objection
18 is, these violations don't speak anything to the structure
19 being in violation. They're just pertaining to the people
20 having parties, or trying to run a food service at the
21 establishment. They say nothing to the structure, and they
22 refer to it as a home, just the relevance to this case.

23 MR. LEIBOWITZ: They discuss that there is a
24 restaurant, basically. The first Exhibit 136 says, service
25 request description, running a restaurant or catering

1 business from the home.

2 MS. MEAD: Right. They all refer to, at this
3 house, at this home, trying to run a business. They don't
4 refer to the structure as being nonconforming or in
5 violation. And there is no violation of the structures
6 themselves.

7 MS. ROBESON: Okay. I understand your point. I'm
8 going to let them in and give them the weight they deserve,
9 because it could be one reason that that building is large.
10 And that goes to whether it's compatible with the
11 neighborhood as for comparative purposes. So I'm going to
12 let them in and give them the weight they deserve. Go
13 ahead, Mr. Leibowitz.

14 BY MR. LEIBOWITZ:

15 Q Thank you. And Mr. Sekerak, if you could just
16 review to yourself, with yourself, the Exhibits 136, 137,
17 138. Let me know when you're finished reviewing them.

18 A Would it be correct that, so initially cited in
19 2008 and then --

20 MS. ROBESON: Okay, it's Mr. Leibowitz' turn to
21 ask questions.

22 THE WITNESS: Okay. Sorry. I'm done --

23 MS. ROBESON: Your attorney is very able, and she
24 will, if you want to explain anything, do it on redirect.

25 THE WITNESS: Okay. I'm sorry.

1 MS. ROBESON: You'll get a chance to.

2 THE WITNESS: I know.

3 BY MR. LEIBOWITZ:

4 Q So my question is, let me know when you are done
5 reviewing the documents?

6 A I'm done quickly reviewing the documents.

7 Q Okay. Do you need anymore time reviewing them?

8 A If I need to read each of the resolutions
9 thoroughly, then I'll need more time.

10 MS. ROBESON: Well --

11 THE WITNESS: If that's the point, I don't want to
12 take up everybody's time if that's not germane.

13 MS. ROBESON: Well, you know, why don't you wait
14 and see what he asks.

15 THE WITNESS: Okay.

16 MS. ROBESON: And then we'll go document by
17 document. Okay. Go ahead, Mr. Leibowitz.

18 BY MR. LEIBOWITZ:

19 Q Is it fair to, let's look at Exhibit 136, first,
20 which is dated 2008.

21 A Uh-huh.

22 Q Is it fair to say that the inspector on this date
23 discovered what he believed to be a restaurant operating out
24 of this person's home?

25 A Yes. Request description, running a restaurant or

1 catering business from the home. And then the resolution
2 goes into some rational of why he had that suspicion.

3 Q Okay. Now, let's move onto 137. Is it fair to
4 say that the inspector, in this case, and this is in May of
5 2010, believed that there may have been a bar running out of
6 this person's home?

7 A Residence at 219 West University is setting up a
8 bar and tables again at his house. He rents the house. He
9 has tried in the past to run a bar and a restaurant/banquet
10 facility at this location.

11 Q Okay. And that inspector is Pete --

12 A H-R-Y-C-A-K.

13 MS. ROBESON: Nobody is going to venture that one.
14 Okay. Go ahead.

15 BY MR. LEIBOWITZ:

16 Q We'll refer to him as Pete. Moving onto Exhibit
17 138, is it fair to say that Pete returns and again discovers
18 a large gathering and perhaps a restaurant/catering business
19 that's operating out of the home?

20 A That he had received a complaint regarding buses.
21 It then refers to previous complaints of parties in the
22 building.

23 Q And the complaint was for running a restaurant
24 from their home, is that correct?

25 A That's the title up there. I don't know if that's

1 just carrying over from the previous complaints, just
2 reading the resolution. I received a call from the
3 complainant stating that two buses just pulled into the
4 driveway at this address.

5 Q Okay.

6 A He talked about the last time he had intervened.
7 When he arrived today there were two large buses and several
8 cars parked in the driveway. While I was waiting, most of
9 the group loaded into the buses. People took attendance.
10 There were other people in attendance, stopped traffic. I
11 took photos of buses leaving. So he certainly, obviously he
12 had his suspicions along that fact.

13 Q And, in fact, states that he was going to issue a
14 fine of \$500?

15 A Yes.

16 Q Okay. Let's --

17 A I'm sorry. I don't know if it's -- if he was
18 referring to it at that occurrence, or referring to -- the
19 last time I interviewed at this address, they were going
20 into the large room. They were preparing food. Again, I
21 don't know if it's, if the \$500 fine, if he's referencing to
22 his previous communication with them or on that date.

23 Q Okay. But you're lead to believe that he believes
24 that there is a restaurant operating out of the house?

25 A Yes, he obviously has some suspicions.

1 Q To say the least?

2 A Yes. Yes.

3 Q Okay. All right. I want to switch gears now to
4 the building that is the property adjacent to the proposed
5 site, but we'll call it north, the one that's abutting
6 University.

7 A Northeast.

8 MS. ROBESON: Okay. The northeast, the property
9 immediately adjoining to the northeast which fronts
10 University Boulevard?

11 MR. LEIBOWITZ: Correct. And that house number is
12 214 West University Boulevard.

13 MS. ROBESON: Okay.

14 BY MR. LEIBOWITZ:

15 Q Do you agree with that?

16 A I can't confirm the address, but I think we're all
17 referring to the same one. Yes.

18 Q Okay. I'm going to call it 214 West University
19 Boulevard. Now, the footprint that we, and we're looking at
20 Exhibit 99©, correct?

21 A Yes.

22 Q Okay. Now, the footprint shown on 99© shows one
23 structure.

24 A Yes. It shows one footprint.

25 Q It shows one, and by one footprint, it appears as

1 if it is one single structure, is that correct?

2 A Yes.

3 Q Okay. But it's actually --

4 MS. MEAD: Are you testifying --

5 MS. ROBESON: Yes. You're --

6 MS. MEAD: -- or asking a question?

7 BY MR. LEIBOWITZ:

8 Q Well, I'm asking a question. It isn't actually
9 one structure, right? There's actually a detached, the
10 structure on the, we'll call it the left side, is a detached
11 garage, right?

12 A Correct. The previous GIS information, that is
13 Exhibit 131, you could tell from that, that it -- from that
14 information, it, you can see a very narrow gap between the
15 two building.

16 Q Okay. So it is, in fact, two structures?

17 A Yes.

18 Q And the detached, the structure on the left or the
19 west side is a garage?

20 A Correct.

21 Q Now, you had testified that you were at the
22 Planning Board hearing, the last Planning Board hearing on
23 this?

24 A Correct.

25 Q You were at both, but --

1 A Yes.

2 Q -- I want to talk about the last one. And you --
3 and that's where the Planning Board made the recommendation
4 that the proposed, the new proposed building should be at
5 maximum two times the surrounding homes?

6 A I was there for the discussion.

7 Q Okay. And you remember that recommendation?

8 A Yes.

9 Q You also remember, there was a lengthy discussion
10 about ways in which the applicants proposed, or ways in
11 which the applicant's goals could be satisfied, different
12 locations and sizes of the buildings, right?

13 A Yes.

14 Q Okay. And there was a spirited discussion about
15 if there could be multiple buildings on the site, right?

16 A Uh-huh.

17 Q You have to answer out.

18 A I'm sorry. Yes, I recall that discussion.

19 Q Okay. Then do you agree with their conclusion
20 that for various zoning reasons, that there can't be
21 multiple buildings on this site as a proposed daycare
22 center?

23 A There could not? Are you talking from a
24 regulatory standpoint? I'm sorry, I shouldn't be asking
25 questions.

1 MS. ROBESON: Well, you can ask him to rephrase,
2 or you can ask him to ask -- if you're confused about the
3 question, you can ask him --

4 THE WITNESS: Got you.

5 MS. ROBESON: -- to ask the question again. Do
6 you need him to ask the question again?

7 THE WITNESS: Let me answer it in two parts then,
8 possibly from a practical standpoint, just 76 child daycare.

9 MS. ROBESON: Well, no, it's his -- okay.

10 MR. LEIBOWITZ: I'll rephrase that question.

11 MS. ROBESON: You --

12 THE WITNESS: Okay.

13 MS. ROBESON: Yes.

14 MR. LEIBOWITZ: Okay. Okay.

15 THE WITNESS: Regulatory or practicality.

16 MS. ROBESON: Do it again.

17 MR. LEIBOWITZ: Okay.

18 MS. ROBESON: I don't recall practicality, but go
19 ahead.

20 BY MR. LEIBOWITZ:

21 Q From a regulatory, from a zoning regulatory law,
22 would it be lawful for there to be multiple buildings on
23 this site for a special exception for a proposed daycare?

24 A Okay. Interesting question. I hadn't thought of
25 this aspect previously. I do recall the Planning Board

1 discussion, and again, we had pursued a lot of options on
2 this property. And the idea of two separate structures
3 probably could not be accomplished, because one of them
4 would be an accessory structure, would have to be located in
5 the rear yard, and there is no rear yard on this lot. So I
6 guess, no, there could not be two.

7 And I didn't even realize that when the discussion
8 was being made. But now that you bring it up, and think
9 that through, it couldn't have two separate structures.
10 They would have to be, if you did something, an
11 architectural treatment like that, they would need to be
12 connected.

13 Q And that was the conclusion the Planning Board
14 came to as well, is that correct?

15 A I don't recall that they concluded that two
16 structures would not be permitted. I don't recall that
17 being part of the discussion.

18 Q Okay. In essence, you are comparing the size and
19 scale of the proposed building to lots where there are two
20 structures?

21 A Yes. The quantitative comparison that I was doing
22 was a gross floor area comparison.

23 Q Okay.

24 A So whether it was one or two structures, it's the
25 GFA on these individual lots.

1 Q Now, let's talk about the proposal for single
2 family homes on this lot. Okay. And is it fair to say that
3 there is an entirely different regulatory process -- is it
4 fair to say that there's a different regulatory process for
5 building a single family home versus building a special
6 exception for a daycare center with greater than 30
7 children?

8 A Yes. There are two processes, but they are both
9 permitted uses. One is permitted use by special exception.
10 And they have two separate processes. Yes.

11 Q Okay. Sekerak, I guess I would appreciate -- this
12 may go faster if you can listen to my question and answer my
13 question, rather than --

14 A Sure.

15 Q -- pontificating about some other issue. I don't
16 mean to be rude about it.

17 MS. ROBESON: Well, maybe pontificate wasn't the
18 best word. I would say, I would phrase it as, just simply
19 answer his question.

20 THE WITNESS: Okay.

21 BY MR. LEIBOWITZ:

22 Q Okay. And in the proposed houses, there would
23 have been five structures, correct?

24 MS. ROBESON: In the preliminary?

25 BY MR. LEIBOWITZ:

1 Q In the preliminary. That was what the proposal
2 was for?

3 A It was for five lots that could have supported
4 five homes. Yes.

5 Q Okay.

6 A And I don't mean to pontificate, but --

7 MS. ROBESON: No. You need to --

8 THE WITNESS: -- but I could like to qualify and
9 clarify.

10 MS. ROBESON: You've answered his question. Your
11 attorney is chomping at the bit to ask all her questions.
12 So you need to just answer his questions. She will get a
13 chance. Trust your attorney. Okay. No more. Really.
14 Move on.

15 BY MR. LEIBOWITZ:

16 Q Thank you. Now, those houses don't exist,
17 obviously, right?

18 A Correct.

19 Q And you had testified that some of them could have
20 been as much as, as large as 5,000 square feet, is that
21 right?

22 A Yes.

23 Q Okay. And that would have been, at 5,000 square
24 feet, that would have been much larger than most, if not all
25 of the existing homes in the defined neighborhood?

1 A Correct.

2 Q Okay. In fact, it may have been, they may have
3 been -- it would have been substantially larger than most of
4 the homes?

5 MS. MEAD: Is that a question, counsel?

6 MR. LEIBOWITZ: Yes.

7 THE WITNESS: Then, yes.

8 BY MR. LEIBOWITZ:

9 Q Now, you have taken issue with the calculation for
10 the average size home in the neighborhood, correct?

11 A The accuracy, the SDAT information to achieve
12 that, yes.

13 Q Okay. And that is a relatively recent development
14 in this case, right? That you've raised that in your letter
15 on September 21st?

16 A Correct.

17 Q Okay. And that information was not before the
18 Planning Board in December or June?

19 MS. ROBESON: You mean at their prior hearing?

20 BY MR. LEIBOWITZ:

21 Q At the prior hearings?

22 A I do not recall a discussion of quantifying the
23 size of the adjoining homes, nearby homes.

24 Q Well, let me ask the question again.

25 A Okay.

1 Q Your contention that there are errors in SDATs,
2 which would impact the calculation of the homes in the
3 neighborhood, that information, you didn't present that
4 information to the Planning Board at either of the prior
5 hearings, did you?

6 A I did not.

7 Q Okay. And that you raised that information that
8 your -- you raised that contention first on September 21st,
9 2011?

10 A In my memo, correct.

11 Q Okay. Now, you've concluded, you've opined today
12 that this proposal meets the master plan, it conforms with
13 the master plan?

14 A Yes.

15 Q And you had opined that the two previous proposals
16 had also conformed with the master plan?

17 A Yes.

18 Q But it's fair to say that people, the technical
19 staff and the Planning Board disagreed with your opinion on
20 the two previous proposals, right?

21 A In the sense of size and scale, yes.

22 Q I did have one other thing to ask you about. You
23 had testified earlier that the site across University
24 Boulevard had been the site of a previous school and
25 daycare.

1 A Yes.

2 Q Okay. Now, you had testified that the master plan
3 had, I don't want to misstate your testimony, but the master
4 plan had left that open, that that could become a school or
5 a daycare in the future. Was that your testimony?

6 A Generally, yes.

7 Q Okay. Now, on page 55 of the Four Corners master
8 plan, do you agree that it, the master plan states, this
9 plan recommends that the six-acre property at 315 University
10 Boulevard, formerly a private school, be acquired for park
11 land?

12 A Yes.

13 MR. LEIBOWITZ: I have no further questions.

14 MS. ROBESON: Now, Mr. Sekerat, is your moment.
15 Ms. Mead, do you have redirect?

16 MS. MEAD: Yes, I do.

17 REDIRECT EXAMINATION

18 BY MS. MEAD:

19 Q Mr. Sekerat, regarding the, how many pages in the
20 Four Corners master plan pertain to recommendations on
21 special exceptions, specific to special exceptions?

22 A I believe effectively one page.

23 Q Thank you. The Exhibits 132, 133, 134, and 135,
24 excerpts from Bethesda-Chevy Chase, North Bethesda, Aspen
25 Hill, and Cloverly master plans, were there any other pages

1 from those master plans pertaining to recommendations on
2 special exceptions?

3 A I did not do an exhaustive search of all those
4 master plans regarding special exceptions. I was
5 specifically looking for recommendations regarding size of
6 structures of special exceptions. And so I found those
7 references in each of those full master plans.

8 Q And Mr. Sekerak, how long, you mentioned this in
9 our original hearing, how long have you been a land planner?

10 MR. LEIBOWITZ: Objection. Beyond the scope of
11 cross.

12 MS. ROBESON: I don't know where it's --

13 MS. MEAD: It's getting to the master plan
14 questions that Mr. Leibowitz asked of Mr. Sekerak.

15 MS. ROBESON: Okay. If they stay within the
16 scope, I'm going to let it in.

17 THE WITNESS: Since 1984.

18 BY MS. MEAD:

19 Q And approximately how many special exception cases
20 have you reviewed or testified?

21 A Oh my goodness. Specifically reviewed, countless.
22 Testified -- I'm struggling to separate those from zoning
23 cases, from variance and so on.

24 MS. ROBESON: Well, you don't have to do that.

25 BY MS. MEAD:

1 Q Just approximately.

2 A Okay. A dozen. More than a dozen.

3 Q And then is master plan recommendations important
4 to a special exception case?

5 A Very much so.

6 Q And if you were reviewing Exhibits 132 through 135
7 for a new special exception, and the language that was read,
8 would you take that to apply to a new building?

9 A Yes. Yes. I certainly would.

10 Q And does the language regarding modifications also
11 apply to new special exceptions?

12 A Yes.

13 Q Thank you. The previous structure, did you have
14 any information regarding when that, on the property, the
15 dentist office, when that structure was constructed?

16 A Yes, I do.

17 Q Approximately?

18 A I'm sorry. I don't have that information in front
19 of me. I did blank on that.

20 Q Do you have that information in your exhibit that
21 you submitted into the record?

22 MS. ROBESON: Would that be 131, the aerial?

23 THE WITNESS: I'm sorry, which exhibit?

24 MS. ROBESON: I don't know.

25 THE WITNESS: I'm sorry, could you repeat the

1 question?

2 BY MS. MEAD:

3 Q Just the approximate time that the previous
4 structure was constructed on the property, if you know?

5 A I don't know. It has been there for a long, long
6 time.

7 MS. ROBESON: But not billions and billions --

8 THE WITNESS: I do not want to guess. I know it
9 was there at the time of the master plan, long before the
10 master plan. There is nothing on Exhibit 131 that would
11 indicate, give me an indication of when this structure was
12 built.

13 BY MS. MEAD:

14 Q And in your review of the previous aerials, did
15 you have any reason to believe that there had been a faux
16 second story constructed on the structure?

17 A No. All appearances, and when it comes to
18 assessing residential character and scale, it's how it's
19 appeared from the outside, not necessarily what these stairs
20 lead to. So yes, I had no reason to believe that would be
21 the case, that it was truly a second story.

22 Q And was the, is it your testimony that it did have
23 a full second story on the structure?

24 A No. No, no. Just a small portion of the
25 footprint would have had a second structure.

1 MS. ROBESON: A second story.

2 THE WITNESS: A second story. Thank you.

3 BY MS. MEAD:

4 Q In your memorandum and in your testimony, is it
5 your opinion that there are other homes, besides the one at
6 219, that have inaccurate SDAT information?

7 A Yes. I've repeated obvious errors.

8 Q Do you have any reason at the previous hearing or
9 the Planning Board discussions to question the SDAT record
10 information?

11 A No, they didn't reference the SDAT. I don't
12 recall them referencing the SDAT information as to be the
13 source of it. Just it was a general, I took it as a general
14 recommendation of twice the size.

15 Q And did the planning recommendation reference the
16 average size of the neighborhood?

17 A Not to my recollection.

18 Q Did --

19 MS. ROBESON: Wait, did you ask if the Planning
20 Board did, or if technical staff did?

21 BY MS. MEAD:

22 Q I asked if the Planning Board in their June
23 recommendation, which is in the record as from June 27,
24 whether the specific language of that recommendation says to
25 use the average size of the surrounding homes?

1 A It did not. It said twice as high as the surround
2 homes.

3 Q And it did not mention what information to use as
4 far as the size of the surrounding homes?

5 A It was not specific regarding the source of the
6 information. I could only assume they would want accurate
7 information.

8 Q Okay. Regarding the exhibits Mr. Leibowitz
9 introduced, Exhibits 136, 137 and 138, do they reference
10 anything about the homes on those properties being in
11 violation of the building code or the zoning ordinance?

12 A No, it seems to be limited strictly to the use of
13 the buildings.

14 Q And was there any information that prior to 2008,
15 there was any issues with use on the property?

16 A No, the earliest information is September of 2008.

17 Q And do you have any information on when those
18 structures were constructed on those properties?

19 A Yes, I do. On lot 17, the primary structure built
20 in 1936.

21 MS. ROBESON: Okay. That's 219 West University
22 you're talking about?

23 THE WITNESS: Yes. Yes, 219. Yes.

24 MS. ROBESON: I don't have the lots in my --

25 THE WITNESS: Got you.

1 MS. ROBESON: For some reason I have the
2 addresses, but not the lots.

3 BY MS. MEAD:

4 Q And does the reference to 219 or lot 17, does that
5 property have a rear yard?

6 A Yes, it does.

7 Q So would that property, under zoning ordinance
8 standards, be allowed to have an accessory structure, or a
9 structure in their rear yard?

10 A Yes.

11 Q And did the DPS notices, did they refer to the
12 structures as homes?

13 A Yes. Yes. 2008 business from the home. In 2010,
14 again, at this house, quote-unquote. And again in 2010,
15 running a restaurant from their home. Yes.

16 Q So in your opinion, would those structures be
17 considered surrounding homes to the property?

18 A Yes.

19 Q In your written testimony, is one of the buildings
20 on that property half the size of the proposed daycare
21 building on the subject property?

22 A Yes. It's stated in the September 21 memo.

23 Q So in your testimony, even if you only used one of
24 those structures, it would --

25 MR. LEIBOWITZ: Objection to the leading nature of

1 the question.

2 MS. ROBESON: Ms. Mead, you are on redirect. Can
3 you not lead the witness. I have a question, though before
4 you get going. What was the, I'm looking for 96(h), the
5 memo, your memo on --

6 MS. MEAD: Dated September 21st. We had --

7 MS. ROBESON: What was the size of the two
8 structures on 219 West University at 219? Okay, the one
9 building is 2,232 and the one is 1,786.

10 THE WITNESS: Correct.

11 MS. ROBESON: And do you know which is which?

12 THE WITNESS: The rear building would be the
13 larger of the two. It had the full second story, as opposed
14 to the front one --

15 MS. ROBESON: Okay.

16 THE WITNESS: -- that the second story didn't go
17 the full depth.

18 MS. ROBESON: Okay.

19 BY MS. MEAD:

20 Q Thank you. In your responses you noted that the
21 Planning Board had commented on multiple buildings on the
22 site. Could you please explain whether or not this property
23 could have a separate structure?

24 A It could not. One would have to be the primary
25 structure. The other one would be an accessory structure.

1 Accessory structures need to be located within the rear yard
2 in the R-60 zone, and this property has no rear yard.

3 Q Does that include a garage?

4 A Yes.

5 Q So a garage would have to be a part of the
6 structure itself?

7 A It would have to be attached. It could not have a
8 detached garage on this single lot.

9 Q Thank you. Your testimony regarding the previous
10 subdivision, that there would be one home on each of the
11 five lots?

12 A Yes.

13 Q If you could, what was the average size of those
14 homes?

15 MR. LEIBOWITZ: Objection. This was asked and
16 answered on direct and on cross.

17 MS. ROBESON: Well, I'm going to give her some
18 leeway.

19 MR. LEIBOWITZ: Okay.

20 MS. MEAD: It just gets to the purpose of
21 Mr. Sekerak's analysis.

22 MS. ROBESON: You're leading up to something.
23 Yes, that's fine.

24 THE WITNESS: I'm sorry, I don't have the average.
25 I could calculate that --

1 BY MS. MEAD:

2 Q No.

3 A -- if it was necessary. But they range between
4 5,272 and 4,000 square feet.

5 Q And what was the purpose of your providing the
6 information on the residential homes?

7 A Additional information regarding what would be
8 residential character and scale in this neighborhood.

9 MS. MEAD: Thank you. I have no further questions
10 for Mr. Sekerak.

11 MS. ROBESON: Okay. Now, I asked a question. I
12 hate to do this. Do you have any questions based on my
13 single question of what the sizes of the two buildings were
14 at 219 West University? Solely on that issue.

15 MR. LEIBOWITZ: You tell me whether -- here is the
16 question and you tell me whether. There was a question
17 asked about when the structures were built, and I didn't
18 remember whether you asked it or --

19 MS. MEAD: I asked it.

20 MS. ROBESON: I think -- yes. And your question
21 would be.

22 MR. LEIBOWITZ: My question is, when was the
23 accessory structure built? We heard when the primary
24 structure was built, in 1997.

25 MS. ROBESON: Wait, which -- I thought he was

1 talking about the -- wait. Are you saying on the subject
2 property?

3 MR. LEIBOWITZ: No, at 219 West University.

4 MS. ROBESON: Was your testimony on the age? I
5 thought that was the subject property. Was that on 219 West
6 University? Okay. You can answer it.

7 THE WITNESS: I'm sorry. The information is, the
8 primary structure built in 1936. There's no information
9 regarding --

10 MS. ROBESON: The accessory structure.

11 THE WITNESS: -- additional construction.

12 MS. ROBESON: I see. Okay.

13 THE WITNESS: Yes, ma'am.

14 MS. ROBESON: Ms. Mead, do you have any, do you
15 have any further questions?

16 MR. LEIBOWITZ: In regard to, just in response to
17 that?

18 MS. ROBESON: Solely in response.

19 MR. LEIBOWITZ: No.

20 MS. ROBESON: Okay. Ms. Mead, do you?

21 MS. MEAD: No. It's there.

22 MS. ROBESON: Okay. We're going to take, it's
23 11:07. We're going to -- I mean, 12:07. I have changed my
24 watch. Actually, that clock is wrong. Anyway, we're going
25 to -- we're going to take a break for one half hour. And

1 I'm not naming the time, because I am really -- we'll take a
2 break until 12:40 for lunch. And everyone please try to be
3 back on time. I know it's hard, but I do appreciate it. I
4 cannot go beyond 5:00 today. So that's what I'm up against.
5 All right. We're all set.

6 (Whereupon, at 12:05 p.m., a luncheon recess was
7 taken.)

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1 A F T E R N O O N S E S S I O N

2 MS. ROBESON: Are the parties ready?

3 MR. LEIBOWITZ: Before we start the testimony --

4 MS. ROBESON: Well, I need to go on the record.

5 (Discussion off the record.)

6 MS. ROBESON: Go ahead. I'm sorry.

7 MR. LEIBOWITZ: I had a quick procedural question.
8 Jim Zepp is here, who is representing the Northwood Four
9 Corners neighborhood and Harriot Quinn, who had identified
10 herself earlier, is it your preference that they -- I can
11 call them as witnesses, or is it your preference that they
12 sort of testify as their own, on their own, and then would
13 be subject to questions by Ms. Mead and by me?

14 MS. ROBESON: Well, are they your clients? I
15 mean, if they are not your clients, they have to testify on
16 their own. If they are you clients, it's really a decision
17 that's up to you.

18 MR. LEIBOWITZ: Okay. They're witnesses more than
19 they are my clients.

20 MS. ROBESON: Fact witnesses? Factual witnesses
21 that you want to call?

22 MR. LEIBOWITZ: Well, I guess that's my -- I don't
23 need to call them if they are going to just, if it was your
24 preference that they testify as their own entity.

25 MS. ROBESON: Well, you have to identify the

1 witnesses that you call in your prehearing statement. So
2 did you identify either one of those in your prehearing?

3 MR. LEIBOWITZ: Both. Both of them.

4 MS. ROBESON: Both. Then I don't have a problem
5 if you want to call them, or if they want to come on their
6 own. It's up to you.

7 MS. ROBESON: Okay. Ms. Mead, it's your case.
8 We're still at the applicant's case, so call your next
9 witness.

10 MS. MEAD: Thank you. We're going to recall Jane
11 Nelson.

12 MS. ROBESON: Ms. Nelson, I remember you testified
13 the last time. This is just a reminder, you are still under
14 oath.

15 DIRECT EXAMINATION

16 BY MS. MEAD:

17 Q Ms. Nelson, are you familiar with the revised plan
18 submitted by the applicant on September 26th, Exhibit 96?

19 A Yes, my firm did the design and the drawings for
20 it. And we coordinated with the rest of the team, including
21 the Greenhorne & O'Mara.

22 Q And were you in attendance at the Planning Board
23 hearing in June on the special exception application?

24 A Yes, I was.

25 Q And are you familiar with the Planning Board's

1 recommendation in the record dated June 27th from the June
2 hearing?

3 A Yes, I am.

4 Q Thank you. Can you please explain your role with
5 the revised submission?

6 A We looked at reducing the, from an architectural
7 standpoint, we looked at reducing the size of the building.
8 The decision was made to reduce the number of children and
9 the faculty.

10 We worked on two, we actually looked at two
11 different designs. One was the previous design that we had
12 submitted with the motif of a central building with
13 subsequent additions added on. That was consistent with
14 other buildings in the neighborhood.

15 We also looked at a completely different design
16 that would respond to comments, both from the community and
17 the Planning Board and staff about the roof line, and making
18 the roof line much more varied.

19 So in that process, we, as John testified earlier,
20 because the size of the building is smaller, we also were
21 able to look at its position on the site. And through
22 comments, both from staff and I believe the community, but
23 definitely staff, the decision was made to locate the
24 building with the shorter end on the Gilmoure Drive, and
25 then also locating, rather than locating the building

1 adjacent to Brunett Avenue, but putting the parking lot on
2 Brunett.

3 And from a building standpoint, the code is very
4 specific that you are required 35 net square feet in the
5 classroom per child. So that once we decided on the number
6 of children we were trying to accommodate, I'm limited to
7 that requirement.

8 So that meant everything else, all of the
9 accessory, the corridors, the restrooms, the faculty lounge,
10 offices, all needed to be, you know, reduced. So as the
11 other designs were very efficient, so again, you're required
12 35 net square feet in the classroom, which means literally
13 the open floor space. The whole building is only 58 square
14 feet per child. So it is, it's still a very efficient floor
15 plan.

16 And the way we are able to do that is, first of
17 all, there are no administrative offices on this site. The
18 administration is handled off-site at other daycares. We
19 also have a basement where we are putting all of the
20 utilities, the mechanical room, you know, the sprinkler
21 room. All of that is in the basement and not taking up
22 space on the ground floor.

23 It was also important to keep the structure at one
24 story and not two stories, because two stories requires two
25 means of egress, two stairs, and an elevator. That increase

1 each, the floor plate by 500 square feet on each level, and
2 that's purely for circulation space. So keeping it one
3 story was the way to keep it very efficient.

4 As I mentioned, we had two designs. One was
5 really a smaller version of the original proposal of the
6 main building structure with wings on it. This design was
7 intended to make the building, from the exterior, appear
8 that it might be multiple residences on the same lot. So it
9 enhanced the multiple gables on the entry facade.

10 MS. ROBESON: And you're referring to Exhibit
11 96(b)?

12 THE WITNESS: Yes, I am.

13 MS. ROBESON: I see it is premarked duplicate. So
14 that's good.

15 THE WITNESS: Correct.

16 MS. ROBESON: Thank you.

17 THE WITNESS: So again, to back up, in the
18 neighborhood the very common motif is a gabled roof, red
19 brick building, and with architectural trim, double hung
20 windows, oftentimes porches designating entry.

21 And so we, again, on this design, we incorporated
22 the gabled roof, the porch entry, and on the sides or ends
23 of the buildings another gable.

24 One of the comments we received from our community
25 meeting was, also in an effort to reduce the gables yet

1 again by what's called a Dutch hip roof, so if you can see
2 on the sides, it's actually, that gable is angled back. So
3 you effectively reduce the height of that facade by that hip
4 gable, Dutch hip gable. So we incorporated those as well.

5 Other comments were, so again, we have the narrow
6 part of the building facade facing Gilmore, and was to try
7 to make that feel not so much as an end building. So we
8 incorporated, it's not only just aesthetic, but it's also
9 functional.

10 We do have the stair exterior of the building to
11 bring you down to the basement. Again, that was an effort
12 not to take up space inside the building. And so we're
13 covering that stair with a shed roof, which helps and is
14 supported by columns and architectural trim. So that helps
15 to articulate that facade and make it feel less like an end
16 of a building.

17 Our elevation on University Boulevard, it was
18 requested that if we could have, this had been blank, solid,
19 one of the staff requested if we could add a window there.
20 So we were able to accommodate the floor plan to incorporate
21 a window on that facade on University Boulevard.

22 On the rear facade, I've got it, on the rear
23 facade, we incorporate the two gables, and we, you know,
24 sort of mix it up a bit and have the central portion the
25 wing motif, as a shed roof.

1 The finishes on the building are the red brick
2 with the double hung windows. We are incorporating a water
3 table to add articulation on the red brick. We have, on the
4 previous versions, we did not have the windows in the
5 gables. We weren't trying to make it look like a two story,
6 but we received comments that suggested that that might be a
7 good thing. So I think it helps the look of the facade. So
8 we're happy to do that.

9 BY MS. MEAD:

10 Q In your opinion, is the revised structure of a
11 residential character and scale, given the surrounding
12 neighborhood?

13 A Yes. I believe it's very compatible with the
14 surrounding neighborhood.

15 Q And in your opinion, do the revised plans reduce
16 the scale of the building from what you had previously
17 proposed?

18 A Yes. From a physical standpoint they, as
19 testified earlier, it's actually the footprint of it is, the
20 gross square footage is actually 32 percent less than the
21 original. And it's even at 20 percent less than our second
22 version. From a massing standpoint, I do feel that the
23 multiple roof lines does reduce that sense of one large
24 building.

25 Q And in your opinion, as an architect, are the

1 revised plans in harmony with the surrounding neighborhood?

2 A I do feel that they are in harmony with the
3 surrounding neighborhood and I also feel that it has the
4 advantage of acting as a buffer between a very busy highway,
5 University Boulevard, and a residential neighborhood. So I
6 think it plays that role well.

7 MS. MEAD: Thank you. I have no further direct
8 questions for Ms. Nelson.

9 MS. ROBESON: Okay. Mr. Leibowitz.

10 CROSS-EXAMINATION

11 BY MR. LEIBOWITZ:

12 Q You said, you talk about it being reduced in size,
13 but is the footprint of the building, is that 4,400 square
14 feet currently?

15 A Yes. That's correct.

16 Q Which is also the gross floor area?

17 A That's right, because it's all one story.

18 Q One story. And you didn't talk about the parking
19 lot, but the parking lot remains approximately the same size
20 as the previous?

21 A You'd have to ask Mr. Sekerak to testify as the
22 parking.

23 Q And how large is the basement?

24 A The basement would be the footprint of the
25 building.

1 Q It's the entire footprint?

2 A Yes.

3 Q And that's -- are the only things that are in the
4 basement the -- or I guess let me ask it this way. Would
5 you tell me what is in the basement?

6 A As I stated, it is all of the utilities would be
7 down there, mechanical rooms for heating, air conditioning,
8 the sprinkler, fire pump room. It would also be storage
9 for, again, if you can see in the plan, the only storage
10 elements in there are the teacher's closets for the
11 classrooms. So all of the supplies for the school, the
12 admin, whatever, would be in the basement.

13 Q Is the basement climate controlled?

14 A Yes, it would be.

15 MR. LEIBOWITZ: I have no further questions.

16 MS. ROBESON: Any redirect, Ms. Mead?

17 REDIRECT EXAMINATION

18 BY MS. MEAD:

19 Q Is the basement below grade?

20 A It's entirely below grade. The entry of the
21 building is at grade for accessibility. So it is entirely
22 below grade.

23 Q And is it accessed internally?

24 A No, it is not. It is accessed from the exterior
25 stairs on the side.

1 MS. ROBESON: Is it included in the 4,400 square
2 foot measurement?

3 THE WITNESS: No, that is an above grade --

4 MS. ROBESON: Measurement.

5 THE WITNESS: -- measurement.

6 MS. ROBESON: Okay. Now, I hate when I do this.
7 Now, Mr. Leibowitz, or do you have anymore questions for --

8 MS. MEAD: No further questions.

9 MS. ROBESON: Mr. Leibowitz, just on that one
10 question?

11 MR. LEIBOWITZ: No.

12 MS. ROBESON: Okay. Ms. Mead, that was record
13 time, I think, for an expert. You can call your next
14 witness. I see Mr. Starkey back there.

15 MS. MEAD: Yes. We will call Mr. Starkey.

16 MS. ROBESON: How many witnesses, do you have
17 anyone that's going to testify on operations, or how many
18 more witnesses do you have?

19 MS. MEAD: We didn't have anyone, since the
20 operations weren't proposed to change, except for as in our
21 written statement of operations, the reduced enrollment.

22 MS. ROBESON: Okay. And the reduced enrollment,
23 because I read your, I want to make sure I'm understanding
24 it, you're not going to have an after care program?

25 MS. MEAD: Right. The before and after care was

1 not part of this revision.

2 MS. ROBESON: Okay. So the hours of operation
3 would be what to what?

4 MS. MEAD: They've remained the same, I believe,
5 from 7:00 a.m. to 6:00 for the clientele, and I think it's
6 6:15 for --

7 MS. ROBESON: And when do the children leave?

8 MS. MEAD: I believe it's at 6:00. Let me double
9 check. It did not change. Yes. Staff arriving and
10 children arriving at 7:00. Staff, latest departure would be
11 7:00. The children, latest departure 6:15.

12 MS. ROBESON: P.m.?

13 MS. MEAD: Yes.

14 MS. ROBESON: So what was the after care program
15 that -- oh, the upper grades.

16 MS. MEAD: Before and after school.

17 MR. LEIBOWITZ: Right.

18 MS. ROBESON: I'm sorry. I get it.

19 MS. MEAD: It was before and after school
20 programs --

21 MS. ROBESON: I get it.

22 MS. MEAD: -- for five and up.

23 MS. ROBESON: Right. Okay. Now I understand.

24 All right. Mr. Starkey, I'm going to remind you, you're
25 still under oath.

1 DIRECT EXAMINATION

2 BY MS. MEAD:

3 Q Mr. Starkey, are you familiar with the revised
4 plan submitted by the applicant on September 26, Exhibit 96?

5 A Yes, I am.

6 MS. ROBESON: Just one second. Mr. Leibowitz, if
7 it helps, your client is able to sit up at the table with
8 you, if that assists you, instead of trying to lean back.
9 I'm afraid you're going to tip over.

10 MR. LEIBOWITZ: I appreciate your concern.

11 MS. ROBESON: So he's welcome to sit up at the
12 table with you. And I'm sorry. Go ahead.

13 BY MS. MEAD:

14 Q Are you familiar with the revised plan submitted
15 by the applicant on September 26?

16 A Yes. I worked with the project team in
17 preparation of those plans.

18 Q Thank you. And were you at the Planning Board
19 hearing in June?

20 A Actually, I was not in attendance at that hearing.

21 Q Are you familiar with the Planning Board's
22 recommendation?

23 A Yes.

24 Q Thank you. Could you please explain the
25 assistance you provided with the revised submission?

1 A I worked with Mr. Sekerak in relation to revised
2 parking lot layout, the access scheme. We discussed the
3 elimination of the bump out and what those impacts would be
4 to the surrounding road network.

5 Q Did you prepare any analysis for the revised
6 submission?

7 A Yes. I prepared a memorandum dated September
8 21st, 2011, to evaluate the reduction in the staffing
9 levels, and the reduction in the number of children. The
10 results of that analysis indicated that the net new and
11 diverted trips would be 31 total in the a.m. peak hour, and
12 41 total in the p.m. peak hour, versus 45 and 60 under the
13 previous enrollment of 125 children and 25 staff.

14 Q Thank you. And what is the conclusion in your
15 analysis?

16 A That previously the project would have met both
17 the local area transportation review guidelines, and under
18 this scenario, with fewer trips, we would again meet that.
19 For the policy area mobility review, previously we would
20 have had to mitigate two trips. Now we'll be required to
21 mitigate one trip. And the applicant has proposed to meet
22 that by payment of the, making a payment in lieu of making
23 any improvements.

24 Q And did your analysis include any opinions
25 regarding the relocated access point?

1 A Yes. The proposed access point meets the County
2 standard. Montgomery County requires a corner clearance of
3 50 feet. We exceed that corner clearance. And again, the
4 circulation within the parking lot will be adequate. We no
5 longer are requiring any parking waivers, since we will have
6 an adequate number of parking spaces.

7 And in my experience for daycare, the time will be
8 set up for drop off and for pickup is in the range of six to
9 eight minutes. And so in an hour, each of these spaces can
10 turn over seven times. There will be more than adequate
11 parking for the parents.

12 Q What is your opinion on the elimination of the
13 right out on Brunett Avenue?

14 A That was a more, a matter of convenience, and also
15 aided in the bus circulation. In this case, we're not going
16 to be having school buses coming to the site. So before, it
17 was a matter of convenience. And in this case, it's not
18 needed.

19 Q Thank you. And what is your opinion on the
20 elimination of the bump out on Gilmoure and Brunett Avenue?

21 A We were, when we proposed that, we were trying to
22 address a prior comment from the community in looking for
23 ways to reduce the speed of traffic through the community.
24 Since that time, we've heard from the community that that
25 was not in their best interest, that they didn't feel it was

1 necessary. So in order to address that, we've eliminated
2 that from our proposal.

3 Q Thank you. Did the Park and Planning staff review
4 your memorandum, addendum, and the revised plans?

5 A Yes, they did. And they were in concurrence with
6 all of our conclusions.

7 Q Thank you. In your opinion, will the trip
8 generation on the revised, as proposed in the revised plans,
9 create an adverse impact on the surrounding road network?

10 A No, it will not. According to Park and Planning
11 guidelines, we're going to be generating a maximum of 14 new
12 peak hour trips. That is a very low number, and again,
13 these conclusions were supported by transportation staff.

14 Q And in your opinion, will the trips generated by
15 the use or the proposed circulation and access on the site
16 adversely impact the surrounding streets, or impact
17 pedestrian and vehicular safety?

18 A No. And in fact, our proposals include
19 improvements to the surrounding sidewalk network, so that we
20 will be enhancing pedestrian safety in the area. And again,
21 we will be generating a very low number of new trips.

22 MS. MEAD: Thank you. That concludes my direct
23 questions of Mr. Starkey.

24 MS. ROBESON: Okay. Thank you. Before I turn it
25 over to Mr. Leibowitz, do you have a, which exhibit is the

1 rendered site plan there? Or just the site plan, not
2 rendered. The one under, 96(a), I think it is?

3 MS. MEAD: Yes.

4 MS. ROBESON: Okay. I have a question on cuing.

5 THE WITNESS: Uh-huh.

6 MS. ROBESON: When I was reading through your
7 report, there's a transportation -- I think it's your report
8 that mentions the transportation management plan?

9 THE WITNESS: That was authored by Ms. Mead.

10 MS. ROBESON: Okay. Well, I guess the deal is, it
11 says, it has a statement, cuing will not be permitted. And
12 there is going to be a manager --

13 THE WITNESS: A transportation coordinator.

14 MS. ROBESON: I'm sorry. Yes. How are you going
15 to prevent cuing? How is that circulation actually going to
16 work?

17 THE WITNESS: What happens is, people come in and
18 actually come in and park and walk their child in. But
19 there won't be somebody, you won't have people coming in and
20 blocking parking spaces and cuing up on site. They will be
21 parking. So that there won't be instances of people
22 jockeying for spaces within the parking isles. They will be
23 actually parked in spaces.

24 MS. ROBESON: Okay. But, okay. Well, I was just
25 thinking, harkening back to my own experience with child

1 care when I liked my children much better than now. They
2 are teenagers. And there were always people going back and
3 forth, and back and forth on the drive isle.

4 THE WITNESS: Well, see --

5 MS. ROBESON: Is there somebody that is going --

6 THE WITNESS: Right.

7 MS. ROBESON: Is there going to be a person
8 standing there?

9 THE WITNESS: There's going to be somebody.
10 There's going to be a person standing out here to ensure
11 that doesn't occur. Previously, people would come in and
12 just take the child, jump out, I'm going to just keep going.
13 Now you have to physically walk your child in, and sign them
14 in and out. That's been a new development over the years.
15 So that there won't be that thing happening.

16 MS. ROBESON: Okay. So there will be someone
17 directing traffic. And what happens -- okay. So you're
18 saying one parent every six to eight minutes. Is there a
19 bulk period, I mean a peak drop off period?

20 THE WITNESS: I mean, that's occurring over that
21 peak one hour.

22 MS. ROBESON: And what -- okay. Okay. So you
23 have a peak one hour?

24 THE WITNESS: Right.

25 MS. ROBESON: And so is it a simple calculation of

1 28 times the number of students? No. It would be --

2 THE WITNESS: It would be, you would have --

3 MS. ROBESON: 76 students within the space of one
4 hour, just assume, hypothetically.

5 THE WITNESS: Right. But again, you're going to
6 have, you also have instances that you also have more than
7 one child per car, on average, also.

8 MS. ROBESON: On average, it's going to be two.

9 THE WITNESS: On average, it's more than one,
10 right.

11 MS. ROBESON: Okay. So now we're down to 35 or
12 38.

13 THE WITNESS: Say 40.

14 MS. ROBESON: Okay. And you've got 28 spaces, and
15 the 40 is spread out over a peak hour. Now, how is it going
16 to work with the staggering time? They're going to --
17 somewhere that TMP says that they're going to stagger drop
18 off and pickup. How is that going to work? I mean, are you
19 going to stagger it by hours, by minutes?

20 THE WITNESS: Okay. For example, if you, Exhibit
21 96(d), the addendum, okay, so you have 76 students. But in
22 that peak one hour, you're only going to have 23 people
23 entering. Okay.

24 MS. ROBESON: Because of the average of two?

25 THE WITNESS: Because of -- empirical data for

1 Montgomery County says that for daycare centers, on average,
2 for 15 staff you're going to have 23 vehicles entering
3 during that time period.

4 MS. ROBESON: Okay.

5 THE WITNESS: Okay. So that's where that
6 staggering comes in.

7 MS. ROBESON: And then, so you've got -- now,
8 where are the staff going to park?

9 THE WITNESS: The staff are going to park there as
10 well.

11 MS. ROBESON: Okay. I just have to figure this
12 out in my head, how it's going to work.

13 THE WITNESS: Okay.

14 MS. ROBESON: So staff are going to figure out,
15 and they're going to park in the parking lot. So that
16 leaves 28 minus, what is staff now, 15?

17 THE WITNESS: Uh-huh.

18 MS. ROBESON: So 28 minus 15.

19 THE WITNESS: 13.

20 MS. ROBESON: So that leave 13 spaces to be
21 utilized during pickup and drop off, correct?

22 THE WITNESS: Uh-huh. Uh-huh.

23 MS. ROBESON: And then you're saying, an average
24 of --

25 THE WITNESS: If you can turn that over ever seven

1 minutes, you can serve 91 cars in an hour.

2 MS. ROBESON: Okay. But you have 91 cars, and 18
3 spaces?

4 THE WITNESS: I'm saying that those 13 spaces --

5 MS. ROBESON: Oh, I see. You calculated it at a
6 six to eight minute drop off.

7 THE WITNESS: Right.

8 MS. ROBESON: Okay. I understand. 91. And it's
9 your testimony that somebody is going to come in and
10 actually monitor what's happening?

11 THE WITNESS: One of the staff members.

12 MS. ROBESON: One of the staff members. Okay.

13 And then how wide is that driveway at Gilmoure?

14 THE WITNESS: 22 feet.

15 MS. ROBESON: And that's the width of the drive
16 isle?

17 THE WITNESS: Approximately.

18 MS. ROBESON: Approximately. Okay. And then how,
19 that traffic mitigation plan says that they're not going to
20 allow parents to park on the street. How are they going to
21 enforce that? Is that the same person?

22 THE WITNESS: That's currently enforced by
23 signage. Along Gilmoure Drive is permit parking already.
24 It's already signed.

25 MS. ROBESON: Okay. So what you're saying is that

1 the regular, however they enforce --

2 THE WITNESS: Right. Montgomery County currently
3 enforces that today.

4 MS. ROBESON: Okay. Okay. Did you have more
5 questions of Mr. Starkey?

6 MS. MEAD: I can just followup on your questions,
7 if I may?

8 MS. ROBESON: Yes. That's fine.

9 BY MS. MEAD:

10 Q Mr. Starkey, you testified that 40 parents would
11 come to drop off children. Is that assuming that they would
12 all come in the peak hour?

13 A That's just an estimation based upon a higher
14 order occupancy of more than one child per car.

15 Q Does that assume that all 76 children would be
16 arriving in the same hour?

17 A That would be assuming they all arrive in the same
18 hour.

19 Q In your experience for child daycare facility
20 uses, do they all arrive in the same hour?

21 A No.

22 Q And you testified that the staff parking would be,
23 require 15 spaces?

24 A Correct.

25 Q Does that assume that all the staff will park on

1 the site and arrive to the property in a vehicle?

2 A That's the worst case, assuming all the staff will
3 park and arrive in their own vehicle.

4 Q Are you familiar with the transportation
5 management plan for the property?

6 A Yes. And I'm also familiar that it was testified
7 that a large percentage of their current staff utilize
8 public transit. And with the availability of transit buses
9 along University Boulevard with direct connections to the
10 Silver Spring Metro, and the availability of the bus stop
11 located at the intersection of Brunett and University
12 Boulevard, we anticipate that a lot of the employees will be
13 using transit. So I was just identifying the worst case
14 situation.

15 MS. ROBESON: Yes. And that's what I was asking.

16 BY MS. MEAD:

17 Q And are you familiar with the transportation
18 management plan commitments?

19 A Yes.

20 MS. ROBESON: And, well wait a minute, because I'm
21 not. As far as the transportation management plan, who is
22 -- okay, so you've got parking. Who, it says they're going
23 to stagger times. How, by what measure are they staggered,
24 and who is going to enforce that?

25 THE WITNESS: The administrative staff of the

1 facility can do that. And they --

2 MS. ROBESON: How are they going to do that?

3 THE WITNESS: When you enroll your child, they
4 establish contracts. They can do that, they can set arrival
5 times through their contracts.

6 MS. ROBESON: Is that what they're going to do?

7 MS. MEAD: I can ask that question I guess a
8 different way as far as --

9 MS. ROBESON: Okay.

10 BY MS. MEAD:

11 Q Does the transportation management plan, and the
12 previous testimony, assume that there is a natural
13 staggering to the arrival and departure of children at the
14 daycare facility?

15 A Yes. Just like any other businesses, people will
16 have people arrive at their place of business at different
17 times of the day, due to the natural process. In society
18 today, people have different arrival times for work. So
19 there is a natural staggering of arrivals through different
20 work schedules.

21 Q So the opening time of the Child Way facility at
22 7:00 a.m. does not mean that all of the enrollees will
23 arrive at 7:00 a.m.?

24 A That's correct.

25 Q And same with the departure?

1 A Correct.

2 Q And the applicant and the childcare provider, will
3 they have any control over the staff arrival and departure
4 time?

5 A Yes.

6 Q Thank you.

7 MS. ROBESON: Well, I'm still confused. Is the
8 plan to put in the contracts the staggered times, or is the
9 plan just to let it naturally occur? Which is your proposed
10 plan?

11 MS. MEAD: If I could answer this one, because the
12 transportation management plan hadn't changed since our last
13 submission, except for the enrollment.

14 MS. ROBESON: Yes, but you had two entrances
15 before. That's why I'm curious. Because now everything is
16 going to be funneling in and out of this single drive isle.

17 MS. MEAD: There was no proposal to contractually
18 impact staggering other than what naturally occurs at the
19 daycare facility. And we didn't have it proposed in the
20 TMP.

21 MS. ROBESON: Oh, I thought it was. I thought I
22 saw that somewhere. Maybe it was in the staff report, the
23 most recent staff report, in the conditions, maybe?

24 MS. MEAD: It says, staff and children to arrive
25 and depart on the site in a staggered manner.

1 MS. ROBESON: Well, that's a condition.

2 MS. MEAD: Right.

3 MS. ROBESON: So I guess my question is, how are
4 you going to implement that condition?

5 MS. MEAD: We can, I was going to have Mr. Kay
6 testify to the agreement to the conditions.

7 MS. ROBESON: You mean, he's going to say, I'll
8 agree to the conditions, and I'll ensure that by whatever
9 method it actually occurs?

10 MS. MEAD: Yes. Steal the thunder from our future
11 testimony.

12 MS. ROBESON: See, he doesn't need to testify.

13 No. Okay. Well, maybe he can --

14 MS. MEAD: We hadn't proactively proposed it in
15 our TMP submitted on September 26. But since staff has
16 recommended it, we're, Mr. Kay's testimony will most likely
17 be that they will agree to such a condition to be posed.

18 MS. ROBESON: I guess what I'm thinking through
19 is, that I've got to make a finding that it's compatible.
20 And I know Mr. Starkey's numbers, but I also know in
21 practice the six to eight, you know, it may be that the six
22 to eight minute time, there may be periods where it's not
23 met. Maybe you can address that.

24 But I would also like some clue, and I didn't mean
25 that pejoratively, I just want some knowledge that how they

1 are going to implement the stagger times, if you can have
2 that. How often does the, to your knowledge how often does
3 the six to eight minute, is it in your experience, is six to
4 eight minutes typical? And unfortunately I'm harkening back
5 to my own childcare days where we had to walk to the child,
6 we talked the child back to the room.

7 THE WITNESS: Well, I conducted studies for one
8 week at two facilities, and that was the average. That was
9 over that week's period, during the peak hours, that was the
10 range. It was six to eight minutes, with six being the
11 minimum and eight being the maximum. So it was, you could
12 say it was seven minutes. That was the duration.

13 MS. ROBESON: Okay. All right.

14 MS. MEAD: I just have another followup question.

15 MS. ROBESON: Sure.

16 BY MS. MEAD:

17 Q Mr. Starkey, based on the enrollment of 76
18 children, in your experience would all the 76 children
19 arrive for daycare within the same peak period?

20 A Within the same one hour?

21 Q Same one hour, same peak hour?

22 A No, not in the same peak hour. Again, this and
23 that is documented by the trip rates established both by
24 Montgomery County and nationally by the Institute of
25 Transportation engineers. So that again, while you're

1 looking for a guarantee, what I can tell you is, all the
2 studies that have been done for these types of facilities
3 demonstrate that not everyone arrives at the same 60 minute
4 window.

5 MS. ROBESON: Okay. I'm going to turn it over to
6 you, Mr. Leibowitz.

7 MR. LEIBOWITZ: Thank you.

8 MS. ROBESON: I assume that was your last
9 question?

10 MS. MEAD: Yes.

11 MS. ROBESON: I'm going to turn it over to you.

12 CROSS-EXAMINATION

13 BY MR. LEIBOWITZ:

14 Q Mr. Starkey, in these two schools that you studied
15 to come up with a figure of six to eight minutes, how large
16 were those school? How many students were at those schools?

17 A One had 15 students, and one had roughly 15.

18 Q 15 and 50?

19 A Yes.

20 Q Okay. Now, would it surprise you to learn that
21 the -- and if you remember this, because you were here last
22 time, that the representative from Child Way testified
23 earlier that it was six to 10 minutes for drop off and
24 longer for pickup, because there was more discussion with
25 the teachers about, did my kid eat a banana, is the example

1 she gave. Would that surprise you?

2 A No. That, my figure is still within that six to
3 10 range. Seven minutes is still within that range.

4 Q I don't mean to get in a debate with you, but 10
5 minutes would be longer than six to eight minutes, right?

6 A Yes.

7 Q And if the pickup is longer than that,
8 potentially, then that's also longer than six to eight
9 minutes, right?

10 A There was no quantitative number associated with
11 that, but yes, that would be longer.

12 Q Okay. And I'm just a simple lawyer, so I'm not so
13 good at math, can you help me with the calculation for the
14 91 cars? Can you just walk me through that, 91 cars in an
15 hour?

16 A 13 spaces turn over every seven minutes. 13 times
17 seven is 91.

18 Q Okay. Now, the site, let me stay on this a little
19 bit. There was a lot of discussion on direct about the
20 staggering, enforcing the stagger. If the, so your
21 understanding is there's no administrative office on the
22 site?

23 A I don't know that I could say that.

24 Q Okay. Let me get you to agree to a hypothetical
25 situation. Hypothetically, if there is no administrative

1 office on site, then who would be the person who would be
2 enforcing the, if there were enforcing of staggering
3 arrivals, who would enforce that if there was no
4 administrator?

5 A As stated in the transportation management plan,
6 we will have a transportation coordinator.

7 Q Okay. And you had also testified that street
8 parking is currently enforced by permits, by signage, right?

9 A That's correct.

10 Q Okay. And that it's permit marking only. Are you
11 aware that permit marking, it is only required from 9:00
12 a.m. to 2:00 p.m., based on the signs there?

13 A I was not aware of the time restrictions.

14 Q Is it fair to say that peak drop off and pickup
15 would be outside of 9:00 a.m. to 2:00 p.m.?

16 A Yes.

17 Q Okay. Now, the size of the parking lot, the
18 current proposal, is it fair to say that the size of this
19 currently proposed parking lot is approximately the same
20 size as the previously proposed parking lot?

21 A I believe that's correct.

22 Q Okay. The most significant difference is access,
23 correct, or egress, perhaps. But in a previously proposal,
24 there was an exit only onto Brunett, and that doesn't exist
25 anymore?

1 A I'm not sure I understand your question.

2 Q Okay. There's currently, the current proposal is
3 that there is only one way in or out for vehicles.

4 A That's correct.

5 Q The previous proposal, there was, if one could
6 enter or exit by vehicle on Gilmore, correct?

7 A Correct.

8 Q Or one could exit onto Brunett?

9 A And one could exit onto Brunett.

10 Q That's correct, right?

11 A What I'm saying is, you could also exit onto
12 Brunett. That's correct.

13 Q Right. That's my question. Okay. And so that's
14 no longer, that's been taken away?

15 A That's correct.

16 Q So everyone who exits obviously has to exit onto
17 Gilmore?

18 A That's correct.

19 Q And from Gilmore, there would be, there are three
20 people and they could drive wherever they please, right?

21 A I don't follow you.

22 Q Well, they could, before, if you -- the previous
23 proposal had a right turn only onto Brunett, right?

24 A Correct.

25 Q Which essentially put you at the intersection of

1 Brunett and University Boulevard?

2 A Correct.

3 Q And if one exited that way, it would force drivers
4 to turn onto University Boulevard, right?

5 A That's because there was a right turn only with a
6 channelized exit. So yes, you would be directed toward
7 University Boulevard. Yes.

8 Q Right. So drivers exiting that way would really
9 not have a real choice, they would have to turn onto
10 University Boulevard?

11 A Based upon the distribution patterns that we use
12 for the study, the majority of people are exiting towards
13 University Boulevard regardless of how they get there. So
14 that even though that exit only entrance is no longer on the
15 plan, everybody is still going to be going that direction
16 anyway.

17 Q Okay. I'm not trying to argue with you. I'm just
18 asking a simple question. So those people would have to
19 exit onto University Boulevard from Brunett in the previous
20 plan, right?

21 A And under the current plan as well.

22 Q The current plan they'd have to go down Brunett
23 Avenue?

24 A Under the current plan, their desire is to go to
25 University Boulevard because that's the, that was the

1 distribution use in the prior study and in this study.

2 Q Okay.

3 A So everybody is going to be going that way. The
4 majority of the people are going that way anyway.

5 MS. ROBESON: What is the majority of people?

6 THE WITNESS: 90 percent.

7 BY MR. LEIBOWITZ:

8 Q Okay. So without debating the figure of 40 cars,
9 you estimate that there might be 40 cars bringing children
10 and picking them up, 90 percent of 40 is 36?

11 A Okay.

12 Q Well, I want you to check my math. I don't want
13 to --

14 A Well, no, if you want to talk about the peak hour
15 generation, which would go to this exhibit --

16 MS. ROBESON: Well, wait a minute. Wait a minute.

17 THE WITNESS: If he wants to ask me about the
18 number of trips that are being generated, then I want to use
19 the numbers that have been based on --

20 MS. ROBESON: Okay. I understand. What are you
21 -- I'm unclear on what you're asking.

22 THE WITNESS: That's my point.

23 MR. LEIBOWITZ: Well, before there was an exit
24 onto Brunett. And so --

25 MS. ROBESON: Correct.

1 MR. LEIBOWITZ: -- some portion of cars would just
2 come right out there and turn onto Brunett, and some would
3 go some other direction.

4 MS. ROBESON: But now everybody --

5 MR. LEIBOWITZ: Now everyone has to leave on
6 Gilmore.

7 MS. ROBESON: So is your question relating to
8 whether some cars are going to turn left, coming onto
9 Gilmore? More cars? Are you saying --

10 MR. LEIBOWITZ: So more cars would turn eastbound
11 on Gilmore, and potentially leave the neighborhood on
12 Renfrew, which isn't pictured on this map.

13 MS. ROBESON: I understand what you --

14 MR. LEIBOWITZ: Or some other drive through the
15 neighborhood to leave some other way.

16 MS. ROBESON: Okay. So for Mr. Starkey, what is
17 your question?

18 BY MR. LEIBOWITZ:

19 Q So the current traffic pattern more easily
20 facilitates that, correct?

21 A No.

22 MS. ROBESON: Wait. The current?

23 MR. LEIBOWITZ: The current more easily
24 facilitates people not leaving using Brunett.

25 MS. ROBESON: I see.

1 THE WITNESS: That would not be my opinion. We
2 had this discussion the last time. And that was not my
3 opinion then. It is not my opinion now.

4 MS. ROBESON: What is -- okay. I'm not going to
5 ask. Okay.

6 THE WITNESS: His contention is that --

7 MS. ROBESON: No. Let Mr. Leibowitz keep going
8 with his questions.

9 THE WITNESS: Okay.

10 MS. ROBESON: And maybe your attorney can let you
11 explain your intention.

12 MR. LEIBOWITZ: Okay. Those are really all the --
13 no need to rehash our lengthy discussion last time. So I
14 think those are all the questions I have.

15 MS. ROBESON: Okay. Ms. Mead, any redirect?

16 MS. MEAD: Yes.

17 REDIRECT EXAMINATION

18 BY MS. MEAD:

19 Q Mr. Starkey, assuming that all of the persons
20 dropping off use a full 10 minutes, and there was 13 spaces
21 for clients to turn over, how many vehicles -- let's do the
22 math, how many vehicles would be accommodated in those 13
23 spaces?

24 A That would be 13 less 91 minus 13, say in round
25 numbers, 91 minutes 13. 78.

1 MS. ROBESON: See, none of this --

2 BY MS. MEAD:

3 Q 78.

4 A 78.

5 MS. ROBESON: None of us attorneys are good at
6 math, so that's why you're -- we're all crossing the
7 examination rules, because we can't do the math. Okay.
8 Your answer again was, if you take 10 percent off of the 91?

9 BY MS. MEAD:

10 Q Or asked a different way, if the drop off time is
11 10 minutes, how many --

12 A Then the spaces would turn over every six minutes
13 instead, so you would, instead of seven minutes, it would be
14 six minutes, and you would lose 13 spaces. 91 minus 13 is
15 78.

16 MS. ROBESON: Okay, so my question is, then say
17 you've got the 91 trips per hour, and then under the -- were
18 the trip generation, the trip distribution rates, are they
19 the LATR distribution rates the technical staff provides
20 you?

21 THE WITNESS: Okay. Let's back up for a moment.
22 We're talking about spaces and we're talking about trips and
23 we're talking about distribution.

24 MS. ROBESON: I know. Right. Now I'm talking
25 about distribution.

1 THE WITNESS: The trip distribution was --

2 MS. ROBESON: This is 90 percent on University?

3 THE WITNESS: Right. I developed the trip
4 distribution, and then it was reviewed by staff, and they
5 asked me to modify it, and this is the distribution that
6 they asked me to use.

7 MS. ROBESON: So the 90 versus 10?

8 THE WITNESS: Right.

9 MS. ROBESON: They approved that trip
10 distribution?

11 THE WITNESS: Correct. In fact, they asked, I had
12 five going into the community. They asked me to up it to
13 10, because they said, people in the community will use this
14 site.

15 MS. ROBESON: Okay. All right. Now, if anybody
16 can figure out what I just asked. No, I do understand it.
17 But Mr. Leibowitz, do you have any questions?

18 MS. MEAD: I still have some questions.

19 MS. ROBESON: I'm sorry.

20 MS. MEAD: That's okay. Sorry.

21 MS. ROBESON: Go ahead.

22 BY MS. MEAD:

23 Q So just to clarify, since you mentioned that the
24 13 spaces could turn over seven to eight times, is that,
25 does that exceed the current proposed enrollment?

1 A Yes.

2 Q Thank you. And does the transportation management
3 plan have any commitments regarding parking on neighborhood
4 streets?

5 A Yes.

6 Q Does it require any restrictions?

7 A It indicates that it will not allow staff or
8 parents to park on neighborhood streets.

9 Q Thank you. Previously in the plan as
10 Mr. Leibowitz noted and is in the record, there was an
11 egress only on Brunett Avenue. Could travelers use either
12 exit to egress in the previous plan?

13 A Yes.

14 Q So a traveler exiting the site, could they have
15 used Gilmore Drive, even if they were headed to University
16 Boulevard?

17 A Yes, they could have.

18 Q What is the current, what is the impact on the
19 revised plan of having the ingress/egress on Gilmore
20 without the egress to Brunett Avenue?

21 A A person how has to travel an additional 100 feet,
22 that is, they have to come out on Gilmore, drive
23 approximately 50 feet along Gilmore, another 50 feet along
24 Brunett, before they would come to the same place they were
25 before.

1 Q Does the elimination of the exit only onto Brunett
2 Avenue change your opinion on the direction that the cars
3 will travel once they leave the site?

4 A No.

5 Q In your opinion, would they be traveled any
6 differently through the neighborhood?

7 A No. Again, with the location of the site at the
8 corner of Brunett and University, and the origin and
9 destination of trip, 90 percent of which were oriented
10 toward University Boulevard, they're still going to travel
11 along Brunett to get to University Boulevard.

12 Q And did staff opine on the revised access plan for
13 the property?

14 A They indicated that they said it would be safe and
15 adequate.

16 Q Thank you. And in your opinion, as you reference,
17 will any of the users of the site come from the
18 neighborhood?

19 A As indicated previously, myself felt the community
20 will benefit from this site. And staff concurred and
21 indicated that they felt approximately 10 percent of
22 community, 10 percent of the trip to the site would come
23 from the community.

24 Q And in your opinion, using the hypothetical of the
25 13 spaces left for the clients of the daycare facility, is

1 it your opinion that there will be only 13 parking spaces
2 available?

3 A No, because of the fact that we anticipate staff
4 using transit to come to the site, we believe that there
5 will be more than 13 spaces available for drop off of
6 students.

7 MS. ROBESON: Is that part of the TMP, that
8 sentence for staff to use transit, or just, you're just
9 assuming that a certain number of staff will use transit?

10 THE WITNESS: That's been the experience of them,
11 of Child Way facilities, at the two other sites that they
12 presently operate.

13 MS. ROBESON: Okay.

14 BY MS. MEAD:

15 Q Does the transportation management plan include
16 any encouragement of the transit use?

17 A Yes.

18 Q That was the only followup question I had.

19 MS. ROBESON: Okay. Well, you know what,
20 Mr. Leibowitz, do you have any questions on what I asked,
21 what I asked?

22 MR. LEIBOWITZ: I don't even know if I understood
23 the answer that he gave.

24 MS. ROBESON: Okay. All right. So I'm going to
25 take that as a no.

1 MR. LEIBOWITZ: So no.

2 MS. ROBESON: All right. Do you have anymore
3 questions of Mr. Starkey?

4 MS. MEAD: I have no more direct questions for
5 Mr. Starkey.

6 MS. ROBESON: Okay. Next. Next.

7 MS. MEAD: I'd like to call Mr. Kay.

8 MS. ROBESON: Mr. Kay, I'm going to remind you,
9 you are still under oath.

10 THE WITNESS: Yes.

11 MS. ROBESON: Go ahead.

12 DIRECT EXAMINATION

13 BY MS. MEAD:

14 Q I just have a few brief questions. As the
15 applicant, do you agree to the testimony provided by your
16 witnesses today and in the previous testimony on this
17 application?

18 A I do.

19 Q And as the applicant, have you reviewed the staff
20 recommendation of approval with conditions for this special
21 exception?

22 A I have.

23 Q And do you agree to follow the conditions of
24 approval, including the transportation management plan, and
25 including condition five that staff and children should

1 arrive and depart at the site in a staggered manner?

2 A Yes.

3 Q Thank you. And as the applicant and ownership
4 entity of the site, had you been on the site when the
5 previous structure was still existing on the property?

6 A I was.

7 Q And do you have any recollection as far as the
8 size of that structure?

9 A While I won't testify exactly to the exact size, I
10 did walk the property on more than four occasions. It was
11 not pleasant. It was in a state of disrepair, mold. I was
12 not sure if stairs would hold, so there was just times I had
13 to actually go out there because people had broken in and I
14 was trying to seal it up from vagrancy.

15 Q Putting the conditions of the structure aside, so
16 you, are you testifying that you had been in the structure?

17 A Yes.

18 Q And was there a second floor to the structure?

19 A Yes, there was.

20 MS. MEAD: Okay. I have no further questions.

21 MS. ROBESON: Okay. Mr. Leibowitz?

22 CROSS-EXAMINATION

23 BY MR. LEIBOWITZ:

24 Q You just testified, and you testified the last
25 time about the lousy condition of the building. You were

1 cited for a number of violations, you've been cited for a
2 number of violations on that site, haven't you?

3 A Are you talking about grass cutting?

4 Q That's one of them, right.

5 A And people dumping?

6 Q Is that -- that's another one.

7 A And then there were people that were breaking into
8 the house, because they were using it for elicited purposes.

9 Q You got cited for that, too?

10 A I didn't get cited. I called the police on that
11 one.

12 Q When you, you didn't buy the property originally
13 from the dentist and his wife, right?

14 A No.

15 Q So when you bought the property, did you look at
16 the condition of the building before you bought it?

17 A Yes.

18 Q Okay. And you characterized it as moldy and run
19 down. Was it moldy and run down when you purchased the
20 property?

21 A Yes.

22 Q Do you know what condition it was in when it was
23 originally sold by the dentist and his wife?

24 A I don't know.

25 Q Okay. Because you weren't the original purchaser?

1 A Correct.

2 Q Who did you buy it from?

3 A From Diane Kay.

4 Q Who is Diane Kay? Are you guys related?

5 A Diane Kay is not a relative of mine.

6 Q Do you know --

7 A I know who she is.

8 MS. MEAD: I'm just going to question the
9 relevance. But --

10 MS. ROBESON: Do you want to proffer the
11 relevance?

12 MR. LEIBOWITZ: We're exploring whether it was an
13 arm's length purchase or not.

14 MS. ROBESON: Okay. Then what's the relevance of
15 whether it's an arm's length purchase or not?

16 MR. LEIBOWITZ: We were -- there has been
17 testimony by Mr. Kay regarding the condition of the
18 building, and his original, that he was going to rent it,
19 potentially, he testified last time, and his various
20 proposals. And so it was to get, to kind of get to the
21 heart of that testimony.

22 MS. ROBESON: My question is whether it meets the
23 special exception standards.

24 MR. LEIBOWITZ: I understand. And those are all
25 the questions I had about that.

1 MS. ROBESON: Unless there is something relative
2 to the credibility of the witness, and there, you know, I
3 can't think of a reason why we would go into that.

4 THE WITNESS: Well, we've already gone into it
5 more than I had planned.

6 MS. ROBESON: Okay.

7 BY MR. LEIBOWITZ:

8 Q Now, you had originally planned to build houses on
9 the lot, correct?

10 A Correct.

11 Q And I think this is already an exhibit. I don't
12 know what number it is.

13 MS. MEAD: I think someone did submit this, as
14 attached to one of their letters last fall.

15 MS. ROBESON: What is it?

16 MS. MEAD: Live at the corner of custom and
17 convenient.

18 MR. LEIBOWITZ: This is a flyer that Mr. Kay had
19 produced to advertise the --

20 THE WITNESS: The then single family residences.

21 MR. LEIBOWITZ: So I don't know if we need to
22 number it again, or I think it might be in the record
23 someplace.

24 MS. MEAD: I have it in the record as either with
25 the letter from October 22nd, 2010. We had it after that

1 letter.

2 MR. LEIBOWITZ: Would it be easier to --

3 MS. MEAD: Would it be easier --

4 MS. ROBESON: What letter of October 22nd? Yes, I
5 think rather than attempting to find it, given that we're in
6 the hundreds now, I'm going to mark it as 138, I think we're
7 up to.

8 MR. LEIBOWITZ: 139.

9 MS. ROBESON: 139.

10 (Exhibit No. 139 was
11 marked for identification.)

12 BY MR. LEIBOWITZ:

13 Q All right. Mr. Kay, I'm showing you what's now
14 been marked as Exhibit 139.

15 A Uh-huh.

16 Q And you recognize this, right?

17 A I do.

18 Q And it's fair to say that this was a promotional
19 flyer for the houses that you had planned to build on the
20 site?

21 A Yes.

22 Q And you advertised them at at least 3,300 square
23 feet of living space, right?

24 A Correct.

25 Q And a two-car garage?

1 A Correct.

2 Q Four beds, three baths, three and a half
3 bathrooms, right?

4 A Correct.

5 Q And a pre-construction price starting at, I'll
6 call it \$800,000?

7 A \$799,000, yes.

8 Q Okay. Is that --

9 A That's correct.

10 Q Okay. And you're pretty familiar with this
11 neighborhood by now, right?

12 A Yes, I am.

13 Q Okay. Are there any, within the defined
14 neighborhood, we'll say, are there any houses with a two car
15 garage that you're aware of?

16 A A defined -- I would need to take a look at the
17 defined neighborhood. I know that there were houses on the
18 other side of Gilmore built by Sterling Merring with two
19 car garages. So yes.

20 Q On the other side of Gilmore, meaning on the --

21 A On the --

22 Q -- west of Brunett, or what do you mean by the
23 other side?

24 A Going west. You can't cut through Gilmore
25 because of the -- if you are traveling west, you can't cut

1 through here.

2 MS. ROBESON: Wait. When you say here, you can't
3 cut through --

4 THE WITNESS: When you travel down Gilmore Drive,
5 Gilmore drive does a dead end.

6 MS. ROBESON: After you cross Brunett Avenue?

7 THE WITNESS: After you cross Brunett Avenue.

8 MS. ROBESON: Yes. All right.

9 THE WITNESS: So there are houses --

10 BY MR. LEIBOWITZ:

11 Q Are you talking about on the other side of the
12 dead end?

13 A If I was to bring up Exhibit, is that 4(f)? Where
14 is Dennis Avenue? Is this Dennis Avenue?

15 Q Yes.

16 A There is, on this street, there are. And I -- is
17 this the defined neighborhood?

18 MR. STARKEY: No.

19 MS. ROBESON: Okay. For the record, can you
20 describe --

21 MR. STARKEY: The defined neighborhood is in red.

22 MS. ROBESON: In red. So it is outside the
23 defined neighborhood.

24 MR. LEIBOWITZ: Okay.

25 MS. ROBESON: To the west of the property.

1 THE WITNESS: To the west of the property.

2 MS. ROBESON: Which side of University?

3 THE WITNESS: It is on the same side of University
4 as the site.

5 MS. ROBESON: Okay.

6 BY MR. LEIBOWITZ:

7 Q And so you're talking about near the intersection
8 of Dennis Avenue and Gilmore there are houses with two car
9 garages?

10 A Correct.

11 Q But that's outside of the defined area?

12 A The defined neighborhood.

13 Q Okay. And is it fair to say that even back at the
14 time that you were hoping to sell these, and is that 2007?

15 A Starting in 2006.

16 Q Starting in 2006 and going into 2007. We'll call
17 it 2006, is that fair?

18 A That's fine with me.

19 Q Okay. Is it fair to say that in 2006, even back
20 then before the housing market took a turn, that \$800,000
21 would have been among the most expensive houses in the
22 neighborhood, in the defined neighborhood?

23 A Are you questioning just these particular houses
24 in this particular site, or are you asking me my marketing
25 expertise as to whether I could sell a house of that size?

1 Q I'm not asking whether you could sell the house.
2 I'm saying, would an \$800,000 -- let me ask it this way.

3 MS. MEAD: I guess I'll question the relevance of
4 this question.

5 MR. LEIBOWITZ: Will you be --

6 MS. ROBESON: I think I know where he's going, so
7 I'm going to let him ask.

8 MS. MEAD: Okay.

9 BY MR. LEIBOWITZ:

10 Q Do you remember what the average home price would
11 have been in the defined neighborhood back in 2006?

12 A I would not have even compared the existing houses
13 to new houses because it's not -- in the time when the
14 housing market was booming, which it was, you could not buy
15 a single family detached house with a two car garage, 3,300
16 square feet or above, for any less than I'll say a million
17 dollars. So at that point in time, to have a site like this
18 that could accommodate something starting from the \$800's --

19 Q Was a deal?

20 A It would have worked, had the economy continued to
21 grow.

22 Q Okay. I'm really asking a different thing then.

23 A Okay.

24 Q In the defined neighborhood, were there houses
25 that were -- were there million dollar houses in the defined

1 neighborhood back in 2006?

2 A In this defined neighborhood that I'm looking at
3 there are no new houses.

4 Q Were there any houses in the defined neighborhood
5 in 2006 that would have sold for \$1 million dollars?

6 A I don't know. I can't attest to what was inside
7 some of those houses, but it doesn't appear that that would
8 be likely.

9 Q Okay. Is it fair to say that the average price of
10 the existing homes in the defined neighborhood in 2006,
11 would have been more along the lines of \$400 or \$450,000?

12 A For a house that was built in the fifties or
13 sixties that seems like a reasonable number.

14 Q Okay.

15 A In descent condition.

16 Q Okay. And maybe some of them on the smaller side
17 might have been even less money during that time?

18 A I suppose. I'd have to check MRLS and attest to
19 your numbers.

20 Q You had testified at the last hearing that you
21 were an expert in real estate, so that's why I'm asking you.

22 A I understand, but you're asking me a point in time
23 of 2006-2007 when everything was going up, up, up.

24 Q Right.

25 A So, you know, I have a pretty good memory, but

1 you're asking me to cite specific data that I could access
2 once I have MRLS, but without MRLS it becomes a little hazy.

3 Q Okay. Now, is it fair to say that --

4 MS. ROBESON: I think what he was trying to get at
5 is whether the homes shown on your brochure were
6 significantly more expensive than the other houses. Would
7 they have been significantly more expensive than the other
8 houses in the neighborhood?

9 THE WITNESS: Any new house, in order to build a
10 new house in and amongst old houses, gentrifying
11 neighborhoods, there would always be a significant
12 difference between new construction and existing
13 construction because you cannot renovate a house that is
14 eight foot ceilings and make it nine or 10 the way new
15 houses are. So it doesn't even pay to renovate in certain
16 cases. You'd have to start from scratch.

17 So yes, there would be a very large
18 differentiation between new construction and existing
19 construction.

20 BY MR. LEIBOWITZ:

21 Q And I guess what --

22 A And that wouldn't be just for this neighborhood.

23 MS. ROBESON: Okay.

24 MR. LEIBOWITZ: What I'm getting at is whether or
25 not these houses were, are comparable to other existing

1 houses.

2 MS. ROBESON: I understand what you're saying.

3 So, if you have another question, do you have another

4 question for him on that?

5 MR. LEIBOWITZ: I'll ask him that question.

6 BY MR. LEIBOWITZ:

7 Q In your opinion, would those houses have been

8 comparable to the existing neighborhood?

9 MS. MEAD: He already answered the question as far
10 as --

11 MS. ROBESON: No, I'll let him --

12 MS. MEAD: -- the new construction being different
13 from the old construction, as far as prices.

14 MS. ROBESON: I'll let him answer.

15 THE WITNESS: When I purchased this site for my
16 construction company, we had no intention of trying to match
17 the prices in the neighborhood. Things were going up. We
18 were trying to keep up with the booming demand for detached
19 single family houses.

20 And as long as financing was available and
21 appraisals caught up with new construction, then one could
22 say in this country you can build for what you can sell.

23 BY MR. LEIBOWITZ:

24 Q So you wanted to build something that was bigger
25 and better than the existing houses in the neighborhood?

1 A If -- yes, and zoning permitted, yes, absolutely.

2 Q Okay. You had to get a permit when you demolished
3 the existing structure, right?

4 A Yes.

5 MR. LEIBOWITZ: We're at 140?

6 MS. ROBESON: Yes.

7 (Discussion off the record.)

8 MS. ROBESON: Okay. I'll mark, is this all one
9 exhibit?

10 MR. LEIBOWITZ: Yes.

11 MS. ROBESON: I'll mark it Exhibit 140. Can you
12 describe it, so I know what to call it?

13 (Exhibit No. 140 was
14 marked for identification.)

15 MR. LEIBOWITZ: Details of demolition.

16 MS. ROBESON: DPS -

17 MR. LEIBOWITZ: DPS application and details for
18 demolition permit of --

19 MS. ROBESON: Okay. That's fine.

20 BY MR. LEIBOWITZ:

21 Q And Mr. Kay, do you agree that this appears to be
22 the details of the --

23 A Yes. Just to let you know, I was not in charge of
24 the construction aspects. We had a site superintendent that
25 would have filled this application out. But I trust that to

1 be true.

2 Q Okay. And you trust he did it correctly?

3 A Yes.

4 Q Okay. And this square footage noted on the
5 demolition permit was 3,404 square feet.

6 A Okay.

7 Q Do you believe that to be true?

8 A I believe that to be the case.

9 Q Okay. And you don't take issue with any of the
10 information that is on this sheet, right, on this form?

11 A The only thing that may come to pass is the number
12 of square footage is whatever was described on public record
13 to fill out the applicable paperwork. Whether that was
14 actually the accurate amount of, you know, qualified square
15 footage, I don't know.

16 Q Okay. But other than that, you don't have any
17 belief that any other information on this document is
18 incorrect?

19 A No, it looks like it's okay.

20 Q Okay. I have no more questions.

21 MS. ROBESON: Okay. Ms. Mead, it's your --

22 MS. MEAD: Okay.

23 REDIRECT EXAMINATION

24 BY MS. MEAD:

25 Q We'll start off, I guess with this document. Did

1 you authorize your superintendent to assess the size of the
2 house when proceeding with the demolition permit?

3 A No. He filed numbers according to paperwork that
4 was existing on file.

5 Q And the final date listed on Exhibit 140 is
6 August 30th, 2007. Had you, were you proceeding with the
7 subdivision plans at that time?

8 A Yes.

9 Q When did you proceed with starting the special
10 exception process?

11 A In 2008.

12 Q 2008. Could you explain the reason why you
13 demolished a single family dwelling?

14 MR. LEIBOWITZ: Objection.

15 MS. MEAD: He asked it in his direct.

16 MS. ROBESON: Yes, you did raise it.

17 MR. LEIBOWITZ: Why it was?

18 MS. MEAD: You repeated his testimony from before
19 about the condition of the home, and attacking his
20 credibility.

21 MS. ROBESON: I'm going to let it in, and I'll
22 give it whatever weight it deserves. Go ahead.

23 BY MS. MEAD:

24 Q That's all. If you can explain the reasons?

25 A Well, as I explained, there were issues with

1 vagrancy, the condition of the house. Then as we started
2 sales, pre-sales, we needed to start with, you know, getting
3 the site ready for development.

4 That house was detracting from attracting and
5 \$800,000 plus buyer. So we needed to prepare the site for a
6 sales trailer, level, backfill, and obviously the economy
7 did not cooperate with us. Thus I proceeded with seeking
8 other types of uses for this property, and it lead me to a
9 special exception for a daycare facility.

10 Q Okay. And just to confirm, the subdivision plan
11 that had been approved for the five homes, that was for
12 residential uses in the R-60 zone?

13 A Residential uses, yes.

14 Q And for Exhibit 139, was it your opinion that the
15 proposed structures would be residential in size and scale?

16 A Yes.

17 Q And were they compliant with the R-60 zone
18 standards?

19 A Yes.

20 MS. MEAD: Thank you. No further questions.

21 MS. ROBESON: All right. And no more questions
22 from you, correct?

23 MR. LEIBOWITZ: Correct.

24 MS. ROBESON: So Ms. Mead, do you have another
25 witness that you want to bring in?

1 MS. MEAD: No.

2 MS. ROBESON: Okay. So that's the end of your
3 case?

4 MS. MEAD: Yes.

5 MS. ROBESON: Okay. Mr. Leibowitz, we're going to
6 move onto the opposition. Is there anyone here who is not
7 represented by Mr. Leibowitz but who wishes to testify, that
8 he's not going to call? Okay. All right.

9 MR. LEIBOWITZ: Mr. Zepp is also here, not
10 represented by me. So he will testify independently.

11 MS. MEAD: He's already on record for Northwood.

12 MS. ROBESON: Okay.

13 MR. LEIBOWITZ: Right. For Northwood-Four
14 Corners.

15 MS. ROBESON: So, why don't you go through -- how
16 many witnesses do you have?

17 MR. LEIBOWITZ: Probably three.

18 MS. ROBESON: Three. Okay. We'll go through with
19 you, and then anybody else can testify if they wish.

20 MR. LEIBOWITZ: We call Karin Klingman.

21 MS. ROBESON: You have to make sure, I can't see
22 where your recording mike is.

23 MR. LEIBOWITZ: It's over here.

24 MS. ROBESON: Yes, that's better. Okay. Please
25 state your name and address, for the record?

1 THE WITNESS: Karin Klingman, 413 Gilmore Drive.

2 MS. ROBESON: Okay. Please raise your right hand?

3 (Witness sworn.)

4 MS. ROBESON: Mr. Leibowitz.

5 DIRECT EXAMINATION

6 BY MR. LEIBOWITZ:

7 Q All right. And tell us your address again?

8 A 413 Gilmore Drive.

9 MS. ROBESON: And can you spell your name, for the
10 record, please?

11 THE WITNESS: K-L-I-N-G-M-A-N. And the first name
12 is Karin, K-A-R-I-N.

13 BY MR. LEIBOWITZ:

14 Q And where is your house in relation to the
15 proposed development?

16 A Immediately to the east of it.

17 MS. ROBESON: Can you, is there some exhibit that
18 shows her house?

19 THE WITNESS: Yes, it's that one.

20 MS. ROBESON: Okay. It's the -

21 MR. LEIBOWITZ: I'm showing you, I've picked up
22 Exhibit 99@.

23 MS. ROBESON: Can you describe where your house is
24 on that exhibit?

25 THE WITNESS: Yes, it's the first one next to the

1 proposed building on Gilmore Drive on the right.

2 MS. ROBESON: Okay, so it's the --

3 THE WITNESS: The little one.

4 MS. ROBESON: Okay. All right. The home on the
5 lot immediately adjoining the subject property to the east
6 fronting Gilmore Drive.

7 THE WITNESS: Right.

8 MS. ROBESON: All right.

9 BY MR. LEIBOWITZ:

10 Q And am I pointing to the correct one?

11 A Yes.

12 Q And this is the house, the property that has just
13 been described?

14 A Right.

15 Q And how long have you lived there?

16 A Since July of 2000.

17 Q And would you characterize your home as a home
18 that's surrounding the proposed development?

19 A It's next to it. Yeah.

20 Q Okay. And do you know what the size of the
21 footprint of your home is?

22 A The footprint is 600 square feet. It's 20 by 30
23 feet, approximately, with a square footage of, it's two
24 story, so it's 1,230 feet, square feet.

25 Q And do you know how big your lot is?

1 A No, actually.

2 Q Okay.

3 A Slightly bigger than their building.

4 Q And do you know what the value of your home is?

5 A It's about \$375,000, because I had it reappraised
6 about two years ago.

7 Q So two years ago it was \$375,000?

8 A Yeah.

9 Q And are we up to 141?

10 MS. ROBESON: Yes.

11 MR. LEIBOWITZ: I'm showing the witness what we've
12 marked as Exhibit 141.

13 MS. ROBESON: How would you describe this?

14 MR. LEIBOWITZ: I'd describe this as overlay of
15 413 Gilmore on the proposed site.

16 MS. ROBESON: Okay. All right. Go ahead.

17 MR. LEIBOWITZ: Okay.

18 MS. ROBESON: Ms. Mead, do you have any objection?

19 MS. MEAD: No objection. I just, did Ms. Klingman
20 prepare this exhibit?

21 THE WITNESS: Yeah.

22 (Exhibit No. 141 was
23 marked for identification.)

24 BY MR. LEIBOWITZ:

25 Q Let's talk about the exhibit. Do you see the

1 yellow box? Do you see your property on the exhibit?

2 A Yes.

3 Q Okay. Is there a yellow box on the property?

4 A Yes. So my house is outlined by the yellow box.

5 Q Okay. And is your, how is your property
6 designated?

7 A And the property is designated by the blue shaded
8 area.

9 Q And to the left of your property, do you see what
10 we're calling the subject property?

11 A Right.

12 Q Okay. And there is some yellow. Is the proposed
13 building designated?

14 A Right. So it doesn't show up good on this printed
15 version, but when you look on the computer, the blue area,
16 which is the outline of my property, is just slightly bigger
17 than the proposed structure.

18 Q And that's sort of the darker blue box?

19 A Yes. Right.

20 Q And there's some yellow boxes inside that darker
21 blue box? What's that?

22 A Right. So I tried to show how much bigger the
23 proposed structure is, compared to my house footprint. And
24 I can easily fit five of my house footprints into the
25 proposed structure. You can see there's a lot of leftover

1 space.

2 Q Now, on the, to the left of that is the parking
3 lot, and there's another blue box in the parking lot, but
4 what is that?

5 A Right. So I was trying to show that the parking
6 lot is larger than my property.

7 Q Okay. Now, how does your house compare in size to
8 other houses in the neighborhood?

9 A I think it's a fairly average size house in my
10 neighborhood, which I don't quite consider to be the
11 neighborhood that's shown here. The houses on Marco and the
12 other cross streets with Gilmore are similar to my houses.
13 so these are two story houses or a single story cape design
14 houses.

15 Q And when you say, when you're referring to, my
16 neighborhood isn't shown here, you're looking at Exhibit
17 99©?

18 A Correct.

19 Q And how many houses are depicted in that drawing?

20 A You mean on this drawing here? There are like
21 seven or eight houses.

22 Q Okay. And is that what you meant by, this
23 isn't --

24 A Right. Yeah.

25 Q This isn't your neighborhood?

1 A Yeah.

2 Q It's too small?

3 A Right.

4 Q Okay. How does the proposed development compare
5 in size and scale to other houses in the neighborhood?

6 A Well, I think it's anywhere from four to five
7 times bigger in size, since my house is close to the average
8 size house in the neighborhood.

9 Q How does the parking lot compare to other lots in
10 the neighborhood?

11 A I think the parking lot is still larger than most
12 people's single home lots in the neighborhood. I have, I
13 think, one of the larger lots, actually, in the
14 neighborhood.

15 Q How does the parking lot compare in size to your
16 driveway?

17 A I don't have a driveway.

18 Q You don't have a driveway. Is that common for
19 somebody not to have a driveway in your neighborhood?

20 A I think probably two-thirds or more. I actually
21 haven't counted. But on Gilmore itself, here are no
22 driveways. And in other parts of the neighborhood, most
23 people don't have driveways. We use on-street parking.

24 Q Now, you heard the testimony, and are you familiar
25 with the previous plan to build single family homes, five

1 single family homes on this lot?

2 A Yes.

3 Q Okay. And you've heard some of the previous
4 testimony about the size of those homes?

5 A Yes.

6 Q How would you characterize those homes in
7 comparison to other houses in your neighborhood?

8 A They would have been bigger, much bigger than
9 other houses in the neighborhood that currently exist.

10 Q And would they have, in your view, would they have
11 conformed with the character of the other houses in the
12 neighborhood?

13 A No, because they would have been bigger and sort
14 of larger in proportion to their lot size. So they would
15 have looked differently in their lots. So it would have
16 been different.

17 Q Do you have an objection to the size and
18 appearance of the proposed development?

19 A Yes.

20 Q What is that?

21 A I think it's going to be too big for what we have
22 on the street currently. And I don't like the idea of cars
23 coming onto Gilmoure in the morning and the evening, having
24 our own little rush hour there.

25 Q And -- I'm sorry.

1 A But it's mostly the size and the fact that it's a
2 commercial development.

3 Q And in your view, does the building look like a
4 house to you?

5 A It looks like a very big house. So it's too big
6 to be a real house, so I don't think it's a house.

7 MR. LEIBOWITZ: I have no further questions.

8 MS. ROBESON: All right, Ms. Mead.

9 MS. MEAD: Thank you.

10 CROSS-EXAMINATION

11 BY MS. MEAD:

12 Q Ms. Klingman, you mentioned that you bought your
13 house in July of 2000?

14 A Yes.

15 Q Did you review the 1996 Four Corners master plan
16 when you purchased your home?

17 A No.

18 Q You didn't review the master plan before
19 purchasing your home?

20 A No.

21 Q So you didn't read the page that recommends this
22 property continue as an office use, a nonresidential use?

23 MR. LEIBOWITZ: Objection.

24 MS. ROBESON: I'll let it go in.

25 THE WITNESS: No.

1 MS. ROBESON: You can ask and you can answer.

2 THE WITNESS: No, I didn't. I knew there was a
3 dentist there, but I don't know what the master plan said.

4 BY MS. MEAD:

5 Q And you mentioned that there is no driveways on
6 your street. Is it true that there's a driveway across the
7 street from the subject property?

8 A Yes, they have a driveway.

9 Q Is it true that there is a driveway adjacent to
10 the property on University Boulevard?

11 A Yes.

12 Q And I'd like to, for the record, I'd like to
13 submit an aerial showing the driveways across from the
14 property an adjacent to the property.

15 MR. LEIBOWITZ: I'm going to object to the
16 question. Her testimony was about driveways on her street,
17 and the proportion in the neighborhood. And because there
18 is a driveway on University, it's not impeaching her
19 testimony.

20 MS. ROBESON: Okay, well --

21 MS. MEAD: It's to the testimony on driveways.

22 MS. ROBESON: All right. Okay. I'm going to let
23 it in. I understand your point but --

24 MS. MEAD: I was very lenient with all of
25 Mr. Leibowitz' questions.

1 MS. ROBESON: -- it's going to come in on rebuttal
2 anyway. So if you want to bring it in, that's fine.

3 MS. MEAD: All right. Yes. Thank you.

4 MS. ROBESON: Wait, I need, are you going to
5 submit that?

6 MS. MEAD: Yes, I was just showing it to
7 Mr. Leibowitz, first.

8 MS. ROBESON: You hang onto it then. What would I
9 call it, aerial photograph of what?

10 MS. MEAD: Of property, showing --

11 MS. ROBESON: Of subject property?

12 MS. MEAD: Yes, showing surrounding properties.

13 MS. ROBESON: Subject and surrounding properties.

14 MS. MEAD: Sorry, 142?

15 MS. ROBESON: Yes.

16 (Exhibit No. 142 was
17 marked for identification.)

18 THE WITNESS: That's probably the only driveway on
19 our block.

20 MS. ROBESON: Which one, the one on University or
21 the --

22 THE WITNESS: No, the one on Gilmore.

23 MS. MEAD: I don't remember asking the question,
24 but --

25 MS. ROBESON: Okay. I can't -- just a second.

1 She's jumping ahead, so hold on everybody. When you say you
2 can't see that, or when you say, that's the driveway, this
3 goes up to the Board of Appeals based on the transcript. So
4 you have to tell me which driveway you're pointing to.

5 THE WITNESS: Yes.

6 MS. ROBESON: Which driveway?

7 THE WITNESS: The one on Gilmore.

8 MS. ROBESON: And at the corner --

9 THE WITNESS: At the corner there at Brunett.

10 MS. ROBESON: At the corner of Gilmore and
11 Brunett, on the south side of Gilmore?

12 THE WITNESS: Right.

13 MS. ROBESON: Okay. All right. So, Ms. Mead, do
14 you want to continue your cross-examination?

15 BY MS. MEAD:

16 Q Yes. Is it true that other properties on
17 University Boulevard have driveways?

18 A Yes.

19 Q Is Gilmore Drive a public street?

20 A Yes.

21 Q Is Gilmore Drive a through street, connecting to
22 other streets?

23 A Yes.

24 Q You mentioned the property, the proposal is too
25 big what's on the street currently?

1 A Right.

2 Q Was that your testimony? Were you aware of the
3 previous subdivision plan that's Exhibit 77 in the record in
4 reference to Exhibits 128 to 130?

5 MR. LEIBOWITZ: If we could show it to the
6 witness. I don't know how she would know it, what those
7 numbers signify.

8 MS. ROBESON: Yes. Can you locate it?

9 BY MS. MEAD:

10 Q The previous subdivision plan that's been
11 referenced in the testimony today?

12 A Yes, those are the five houses that were
13 originally planned.

14 MR. LEIBOWITZ: And so the record is clear,
15 Ms. Mead is referring to Exhibit 77.

16 BY MS. MEAD:

17 Q And in your opinion, were those structures
18 residential homes, were you aware?

19 A Yeah, they're residential homes.

20 Q And so does Exhibit 77 show three of those homes
21 on Gilmore Drive?

22 A Yes.

23 Q So there could have been three homes on Gilmore
24 Drive on the side of the property?

25 A Yes.

1 Q And are those homes the same size as the proposal
2 special exception daycare facility?

3 A I don't know.

4 Q If you know.

5 A I don't know. I mean, three of them look smaller,
6 and three, two of them look smaller.

7 Q Are you familiar with the testimony earlier today
8 regarding the size of those homes being between 4,000 and
9 5,000 square feet?

10 A Yeah, I remember that. Yeah.

11 Q So these approved homes, in your opinion they were
12 too big for what's on the street currently as well?

13 A Yeah, they were big compared to what's on the
14 street now.

15 Q Did you oppose the subdivision?

16 A No.

17 Q Has South Four Corners indicated that they
18 supported that subdivision?

19 A I don't think the housing association opposed it
20 either.

21 MS. MEAD: Those are all the questions I have for
22 this witness.

23 MS. ROBESON: All right. Mr. Leibowitz, any
24 redirect?

25 MR. LEIBOWITZ: A little bit.

1 REDIRECT EXAMINATION

2 BY MR. LEIBOWITZ:

3 Q You were asked about the house next door where the
4 dentist lived. Were you familiar with that house?

5 A Vaguely. I wasn't in the house proper ever. I
6 was in the office a couple times, and he had a sun porch.
7 So that's where I usually visited.

8 Q Okay.

9 MS. MEAD: I didn't ask any questions about the
10 previous structure.

11 MR. LEIBOWITZ: It was one of your first
12 questions.

13 MS. ROBESON: I'm going to, in the interest of
14 getting through this --

15 MS. MEAD: Okay.

16 MS. ROBESON: -- I'm going to let it in.

17 MS. MEAD: All right.

18 BY MR. LEIBOWITZ:

19 Q And you were asked about whether or not you were
20 familiar with that as an office. Do you know whether
21 someone lived there?

22 A Yes, Dr. Strahan lived there with his wife.

23 Q Okay. And do you know if he also worked there?

24 A Yes, he worked there.

25 Q In your view, was it primarily a house or

1 primarily a commercial establishment?

2 A It was his residence, and he had an office there.

3 Q Okay. And looking at Exhibit 77, can you tell
4 from looking at that what the square footage of any of the
5 footprints of any of those buildings was, proposed
6 buildings?

7 A Not offhand.

8 Q Okay. Thank you.

9 MS. ROBESON: All right. Ms. Mead, I'm going to
10 give you a chance. Do you have any --

11 MS. MEAD: No.

12 MS. ROBESON: All right. Next witness.

13 MR. LEIBOWITZ: Our next witness is Joe Kenealy.

14 MS. ROBESON: Please state your name and address,
15 for the record?

16 THE WITNESS: My name is Joseph Kenealy, for the
17 record spelled, K-E-N-E-A-L-Y. We live at 9902 Lorain
18 Avenue.

19 MS. ROBESON: Okay. Please raise your right hand?

20 (Witness sworn.)

21 MS. ROBESON: All right. Proceed Mr. Leibowitz.

22 DIRECT EXAMINATION

23 BY MR. LEIBOWITZ:

24 Q Now, you said you live on Lorain Avenue. How far
25 is that, is your house from the proposed development?

1 A Approximately three blocks.

2 Q Are you within the defined neighborhood?

3 A No.

4 Q Okay. How long have you lived in the community?

5 A 17 years.

6 Q And were you a patient at the former dental
7 office?

8 A Yes, I was.

9 Q And do you know who lived there?

10 A Dr. Strahan and his wife, I believe.

11 Q Okay. So as a patient, were you actually in the
12 building?

13 A In the dental offices, yes.

14 Q Okay. But not in the residence, the residential
15 portion of it?

16 A No.

17 Q And do you know how many operatories he had?

18 A My recollection was, there were the two dentists,
19 and a receptionist, and occasionally a dental assistant.

20 Q Okay. So in terms of employees, that was four
21 people?

22 A That's the most I ever recognized there.

23 Q Okay. And do you remember how many rooms there
24 were with dental chairs? Were they one for each dentist?

25 A I recall two. Yes.

1 Q Okay. And how long were you a patient there?

2 A I don't recall specifically. The dentist who was
3 in residence there was Strahan, who is my personal dentist.
4 I've been seeing him for 35-40 years, and he was in
5 residence there for five years or longer. I don't know
6 specifically.

7 Q Okay. And was there a waiting room for patients?

8 A There was a reception area, yes.

9 Q Okay. How big was that?

10 A I'm going to guestimate 12 by 15, maybe a little
11 bit larger.

12 Q And on a typical visit, how many patients might be
13 waiting there?

14 A One to two, sometimes none.

15 Q Did you typically walk there or drive there?

16 A I drove there.

17 Q Okay. Where did you park when you drove?

18 A I parked in Brunett Avenue immediately in front of
19 the office.

20 Q Did he have a parking lot?

21 A Not that I'm aware of.

22 Q Okay. And where was the entrance?

23 A The entrance to the dental office was immediately
24 facing Brunett Avenue.

25 Q So you would park on Brunett and then just walk

1 right in?

2 A Right in front of the office and walk in. That's
3 correct.

4 Q Okay. And as far as you could tell, was it clean?

5 A The office was clean, and the yard appeared to be
6 clean.

7 Q And did you ever observe any mold or foul smells
8 or anything like that?

9 A No.

10 Q And were you aware of any problems with
11 cleanliness or anything of that nature?

12 MS. ROBESON: Okay. Mr. Leibowitz, I don't know
13 where those questions are leading. I don't understand the
14 relevance of the mold being on the property at one point.
15 Is there relevance to any of the special exception criteria
16 here, or --

17 MR. LEIBOWITZ: It's in response to Mr. Kay's
18 testimony.

19 MS. ROBESON: Okay. Well, I understand Mr. Kay's
20 testimony. I'm not sure I care. I can't find a special
21 exception criteria, thinking it through, that that would
22 address. So I am going to ask you just to, unless there is
23 something about the credibility of the witness --

24 MR. LEIBOWITZ: That was the last question I had
25 about that, at any rate.

1 MS. ROBESON: All right. Fine.

2 MS. MEAD: I promise not to have any cross on
3 that, on the mold.

4 MS. ROBESON: Well, if you can find a tie to the
5 special exception criteria, I'll listen, but --

6 BY MR. LEIBOWITZ:

7 Q And as far as you remember, was there an upstairs
8 to the dentist's office?

9 A My recollection is that the dental office area was
10 a one story structure.

11 Q You heard Ms. Klingman's testimony regarding
12 driveways in the neighborhood. Did you hear --

13 A Yes, I did.

14 Q Okay. Do you -- what is your estimation to the
15 proportion of homes that have driveways?

16 A In the area under this neighborhood relating to
17 the special exception or to the general neighborhood?

18 Q Let's start with the, in the defined --

19 MS. ROBESON: If you don't mind putting that, is
20 it Exhibit 4(a)?

21 MS. MEAD: Exhibit 4.

22 MR. LEIBOWITZ: And if I could, maybe I can bring
23 it closer to the witness.

24 MS. ROBESON: Yes.

25 MR. LEIBOWITZ: It's hard to see.

1 BY MR. LEIBOWITZ:

2 Q We're looking at Exhibit 4(a) that has the defined
3 neighborhood.

4 A I can't, with any degree of accuracy, tell you
5 about the number of houses that actually have driveways in
6 the defined area. If it's similar to what I know throughout
7 the rest of this general south of Four Corners area, I think
8 about a third of the houses have driveways.

9 Q So, and you're saying, in the more general
10 neighborhood not --

11 A This general south of Four Corners area, about a
12 third of the houses, to my knowledge, have driveways.

13 Q Okay. And so the record is clear, and the hearing
14 examiner can't quite see what indication you're making, you
15 were pointing, you were using your hands --

16 A To indicate this south of Four Corners area.

17 Q Which is the --

18 MS. ROBESON: I still can't see it.

19 MR. LEIBOWITZ:

20 Q Okay. It's the area --

21 A Just hand it to her.

22 Q -- the area bordered by Colesville Road on the
23 east?

24 A Yes.

25 Q And bordered -- what -

1 A What you call by the beltway along the south and
2 to the west it would be, oh --

3 MS. ROBESON: Is that Dennis Avenue?

4 BY MR. LEIBOWITZ:

5 Q This is Dennis Avenue.

6 A Dennis, yes, this general block of property.

7 Q Okay. And is that area, is that the area that is
8 generally referred as Four Corners?

9 A Pretty much.

10 Q Okay. Can you, can you think of any homes that
11 have a two car garage in the south Four Corners
12 neighborhood?

13 A I don't have any personal knowledge of any.

14 MR. LEIBOWITZ: I have no further question

15 MS. ROBESON: All right. Ms. Mead?

16 MS. MEAD: Thank you.

17 CROSS-EXAMINATION

18 BY MS. MEAD:

19 Q I'd like to show Mr. Kenealy what we're going to
20 propose as Exhibit 143. Does this appear to be an aerial of
21 the property with the previous structure on it, the
22 dentist's office?

23 (Exhibit No. 143 was
24 marked for identification.)

25 A Yes, it is. Yes, it is.

1 Q And does there appear to be a parking area for
2 Dr. Strahan's use?

3 A There appears to be a driveway, yes.

4 Q Does there appear to be a car parked perpendicular
5 to that driveway to indicate parking spaces?

6 MR. LEIBOWITZ: Can I take a look at it?

7 THE WITNESS: I believe this I what, this is a
8 vehicle that you're --

9 MS. ROBESON: Is that in the record?

10 MS. MEAD: No, not yet. We're going to propose it
11 as Exhibit 143.

12 THE WITNESS: That appears to be a vehicle.

13 MS. ROBESON: What do you want to call that?

14 MS. MEAD: Aerial with previous structure.

15 MS. ROBESON: I thought I asked for that earlier.

16 MS. MEAD: I think we just found it.

17 MS. ROBESON: Okay. And are these --

18 MS. MEAD: The other one was 142 that we --

19 MS. ROBESON: Okay.

20 MS. MEAD: -- I had already shown Mr. Leibowitz.

21 MR. LEIBOWITZ: Is there more than one copy of
22 143?

23 MS. ROBESON: I can make copies. I can take a
24 one-minute recess. Okay. We'll go off the record and be
25 back in a minute.

1 (Whereupon, at 2:30 p.m., a brief recess was
2 taken.)

3 MS. ROBESON: All right. I do have copies here.
4 I'm going to keep a copy. I'm going to let Mr. Leibowitz
5 have the color, since he hasn't had a chance to --

6 MR. LEIBOWITZ: Thank you.

7 BY MS. MEAD:

8 Q Mr. Kenealy, if you could please clarify, you
9 mentioned you were a patient for 35-40 years at Dr. Strahan.
10 Was he at this location for those 35-40 years?

11 A I'd like to correct you for the record. I was not
12 a patient with Dr. Strahan. I was a patient of his
13 colleague dentist.

14 Q At that location?

15 A Yes, for a portion of the time there, for five or
16 six years, however long he was in residence with
17 Dr. Strahan. I don't know the exact period.

18 Q Just five to six years that he was at that
19 location?

20 A It could have been longer.

21 Q Okay.

22 A I don't remember the exact period.

23 Q Okay. And in that period, when you went to the
24 dentist, you drove the three blocks, not walked?

25 A No, actually, I was not, did not live in the

1 neighborhood at that time. It was prior to me moving to
2 that neighborhood. So it was prior to 17 years ago.

3 Q Okay. And then, once he, for the five or six
4 years that he was in the neighborhood, you would still drive
5 the three blocks to use the dentist office?

6 A No, I lived in Takoma Park at the time --

7 Q Okay.

8 A -- that my dentist was in residence there.

9 Q Okay. Understood. To your knowledge was
10 Dr. Strahan's use a special exception use on the property?

11 A I know how it was, but I didn't know at the time.
12 I'm assuming it was a special exception use. I don't know.

13 Q Okay. Just say if you know.

14 A I don't know.

15 Q As a patient of Dr. Strahan's, do you know if he
16 had a transportation management plan that you had to view
17 prior to being a patient?

18 A There was no requirement to that effect.

19 Q I have no further questions.

20 MS. ROBESON: All right. Any redirect?

21 REDIRECT EXAMINATION

22 BY MR. LEIBOWITZ:

23 Q To your recollection, did you ever park in the
24 parking lot at his house?

25 A No, never.

1 MR. LEIBOWITZ: No more questions.

2 MS. ROBESON: All right. Thank you.

3 MR. LEIBOWITZ: Do you want the color copy back,
4 for the record?

5 MS. ROBESON: Yes, I would like that, for the
6 record.

7 MR. LEIBOWITZ: I don't mind.

8 MS. ROBESON: Your next witness, Mr. Leibowitz.

9 MR. LEIBOWITZ: We would call Glen Richardson.
10 Your indulgence.

11 MS. ROBESON: Mr. Richardson, please state your
12 name and address, for the record.

13 THE WITNESS: Glen Richardson. Did you say my
14 name?

15 MS. ROBESON: And your address.

16 THE WITNESS: Thank you. Glen Richardson, with
17 one N. 409 Gilmore Drive, Silver Spring, 20901.

18 MS. ROBESON: Thank you. Please raise your right
19 hand?

20 (Witness sworn.)

21 MS. ROBESON: All right.

22 DIRECT EXAMINATION

23 BY MR. LEIBOWITZ:

24 Q Would you please tell us your address again?

25 A I'm at 409 Gilmore Drive.

1 Q And where is that in relation to the proposed
2 site?

3 A The third house east of the applicant's property,
4 on the same side of Gilmore Drive.

5 Q Will you look back again at Exhibit 99©? Is your
6 house depicted on this exhibit?

7 A Yes, it is.

8 Q And is your house the last gray shaded house east
9 of the proposed building on Gilmore Drive?

10 A Yes, it is.

11 MS. ROBESON: On the same side of Gilmore --

12 THE WITNESS: That's correct.

13 MS. ROBESON: -- as the subject property? Okay.

14 BY MR. LEIBOWITZ:

15 Q And do you live within the defined neighborhood?

16 A Yes, I do.

17 Q How long have you lived there?

18 A Almost 26 years.

19 Q And are you familiar with the property that's at
20 issue today?

21 A Yes, I am.

22 Q Are you familiar with the building that was there,
23 that used to be there?

24 A Yes, I am.

25 Q Okay. And how are you familiar with that?

1 A Well, I lived right next door to it, almost, for
2 19 and a half years. I saw it if not daily, at least weekly
3 for 19 and a half years until the time the building was
4 razed.

5 Q And who lived there?

6 A Dr. Strahan and his wife, Jean.

7 Q Did you know Dr. Strahan, or do you know
8 Dr. Strahan and his wife, Jean?

9 A Only casually from block parties.

10 Q And to the best of your knowledge, did the house
11 have a second story?

12 A No, it had one story.

13 Q Okay. And did Dr. Strahan have a home office in
14 his house?

15 A Yes, he did.

16 Q And what kind of office was that?

17 A He practiced dentistry.

18 Q And to the best of your knowledge, and where was
19 the dental office located within the house within the
20 building?

21 A Well, it was in the structure that used to be his
22 two car garage.

23 Q Okay. And he converted that into an office?

24 A Converted it to office space.

25 Q Okay. Did the dental office have a second floor?

1 A No, it did not.

2 Q Okay. Do we have Exhibit 76 handy?

3 MS. ROBESON: Would you tell me what it is?

4 MR. LEIBOWITZ: It would be one of these bigger --

5 MS. ROBESON: Larger plans.

6 MR. LEIBOWITZ: Yes.

7 THE WITNESS: Is it the last one there?

8 MR. LEIBOWITZ: Yes.

9 MS. ROBESON: Okay.

10 BY MR. LEIBOWITZ:

11 Q Mr. Richardson, I'm going to refer you to Exhibit
12 76 that I have up here. Is there a picture here that
13 depicts Dr. Strahan's house?

14 A Yes, there is.

15 Q Which picture is that?

16 A The one in the top left quadrant of the map.

17 Q Okay.

18 A That's correct.

19 Q And have you taken, have you had the opportunity
20 to look at this picture?

21 A I've seen that photo several times.

22 Q Okay. In your view, based on looking at that
23 picture, do you see a second floor?

24 A No, I do not.

25 Q Could you take a look at the picture again and

1 characterize the roof for me?

2 A Let me get closer here. Well, on what was the
3 original house, I see a pitched roof --

4 MS. ROBESON: Now wait, when you say the original,
5 I see that it's kind of divided between a brownish structure
6 and a white structure. Is that fair to say?

7 THE WITNESS: That's correct.

8 MS. ROBESON: Okay. So when you say the original
9 house, you're looking at the brown portion?

10 THE WITNESS: I'm looking at the brown portion
11 closer to University Boulevard.

12 MS. ROBESON: Okay.

13 THE WITNESS: It wraps around to the east and the
14 north of the white part, the white is a patio. This is the
15 original house. There is a pitched roof, maybe a little
16 indent window, but maybe some attic space.

17 BY MR. LEIBOWITZ:

18 Q Okay. Is the white portion, is that where the
19 dental office was?

20 A No, it was not.

21 Q Okay. Where was the dental office?

22 A The dental office was the brown space over here on
23 the, that would be the west side of the property, the side
24 joining Brunett Avenue.

25 Q Okay. Thank you. How would you compare the size

1 of Dr. Strahan's house to the surrounding houses?

2 A The house itself was pretty average, like the rest
3 of the houses in the defined neighborhood.

4 Q And if you include the dental office, is that --
5 how does that compare to houses in this --

6 A If you include the enclosed space for the dental
7 office that used to be the garage, it gets up to a little
8 over 3,400 square feet, which would put it, you know, about
9 two and a quarter times the average house in the defined
10 neighborhood.

11 Q Okay. So this two and a quarter times the average
12 house, how it would compare, that would make it larger?

13 A It's larger. Correct.

14 Q And have you had a chance to review the
15 recommendation from the Planning Board?

16 A Yes, I have.

17 Q Okay.

18 MS. ROBESON: The Planning Board or technical
19 staff.

20 MR. LEIBOWITZ: The Planning Board.

21 MS. ROBESON: Okay.

22 BY MR. LEIBOWITZ:

23 Q Let me show you the, I believe it's Exhibit --

24 A Is this the second report?

25 Q The second report.

1 A Is that Exhibit 94?

2 MS. MEAD: Yes.

3 BY MR. LEIBOWITZ:

4 Q And could you --

5 MS. ROBESON: I have a copy --

6 MR. LEIBOWITZ: Okay.

7 MS. ROBESON: -- if you want to --

8 MR. LEIBOWITZ: We have, I have a copy.

9 BY MR. LEIBOWITZ:

10 Q Could you the last, on page two, the last sentence
11 of that first paragraph?

12 A Specifically, a proposed structure at this
13 location should be at maximum no more than twice the size of
14 the surrounding homes, and carefully articulated to appear
15 residential in character given the master plan guidance.

16 Q What is the average size of the surrounding homes,
17 to your knowledge?

18 A Technical staff calculated the average home in the
19 defined neighborhood as \$1,296 square feet.

20 Q Do you know how many homes are in the defined
21 neighborhood?

22 A 79.

23 Q Okay. And based on your personal observations, do
24 you believe that the technical staff's computation is
25 accurate?

1 A Yes.

2 Q Okay. There has been some testimony from
3 Mr. Sekerak that perhaps the source of the -- we don't know
4 the source of that information, but the source of SDAT
5 records, that maybe the calculation is inaccurate. Based on
6 your personal observations, do you have any reason to
7 believe that that is inaccurate?

8 A I have no reason to believe, my house is measured
9 correctly. I have no reason to believe any other house is
10 not measured correctly.

11 Q And what is, what's the square footage of your
12 house?

13 A My house is just under 2,300 square feet.

14 Q And would you say that your house is larger,
15 smaller, or about average for the defined neighborhood?

16 A I am the largest house in the defined
17 neighborhood.

18 Q Now, did you have an opportunity to look at the
19 square footage of some other houses on Gilmore Drive?

20 A Yes, I did.

21 Q And do you remember the square footage of them?
22 And let me know if you need to refresh your recollection.

23 A Well, I didn't specifically look at Gilmore
24 Drive. I look at the whole defined neighborhood. There is
25 only one house more than 2,000 square feet. There's three

1 or four houses that are just over 1900 square feet. But 14
2 of my neighbors have houses less than 1,000 square feet.

3 MS. ROBESON: Total floor area or footprint?

4 THE WITNESS: Total floor area, total square feet.

5 BY MR. LEIBOWITZ:

6 Q How many are less than 1,000 square feet?

7 A 14 of the 79 homes were less than 1,000 square
8 feet each.

9 Q How did you come to, how did you learn that?

10 A Well, the SDAT data is public domain. The records
11 are out there for anyone to go in and key an address in. I
12 surveyed all 79 properties in the defined neighborhood.

13 Q Now, Mr. Sekerak testified that he looked at the
14 SDAT data and then looked at the houses and said, gosh,
15 these couple of houses can't possibly be accurate. Were you
16 able to do some of that same analysis?

17 A You know, I -- you know, you can look at houses
18 and declare they are mismeasured or stuff, but whatever
19 number you come up with it's immaterial. You find
20 additional missing space, it's immaterial spread out over
21 the defined neighborhood.

22 MS. ROBESON: I'm sorry, I couldn't understand
23 that.

24 THE WITNESS: If you find some missing space on
25 the property, it's almost immaterial in the calculations,

1 considering the defined neighborhood.

2 BY MR. LEIBOWITZ:

3 Q And explain that answer? Why is it?

4 A Well, for every 1,000 feet, Mr. Sekerak find in
5 the neighborhood of 79 homes, it's only going to increase
6 the average size of the 79 homes by less than 1 percent, you
7 know. You spread that over the 79 homes.

8 Q So basically, you're saying, it's mathematically
9 insignificant when averaged over 79 homes?

10 A That's correct. That one or two of them may be
11 mismeasured, yes, it's mathematically immaterial.

12 Q Do you know what the smallest house I the defined
13 neighborhood is?

14 A There is one house that's 807 square feet.

15 Q What street is that on?

16 A Gilmore Drive.

17 MS. ROBESON: That's how many square feet?

18 THE WITNESS: 807. Do I need to speak louder, or
19 is it my accent, or both?

20 MS. ROBESON: No, I think it's when you look down.

21 THE WITNESS: Okay. All right.

22 MS. ROBESON: I think that's what it is.

23 THE WITNESS: I'll move closer or something.

24 BY MR. LEIBOWITZ:

25 Q Earlier today, did you hear Mr. Sekerak talk about

1 the two houses across University Boulevard, 219 and 211 West
2 University Boulevard?

3 A I heard his testimony.

4 Q Okay. And would you characterize those houses as
5 surrounding homes?

6 A 219 is certainly, you have a narrow definition of
7 surrounding. It certainly is one of the houses across
8 University Boulevard from the applicant's property. 211 is
9 a little farther down the street. But they're both in the
10 defined neighborhood.

11 Q And how wide is University Boulevard at that
12 juncture?

13 A Well, six lanes with a median, a median wide
14 enough to support left turn lanes, in addition to the six
15 traffic lanes.

16 Q So including the left turn lane, does that make it
17 seven lanes plus a median?

18 A That's correct.

19 Q Let's talk about traffic a little bit. Actually,
20 before we talk about traffic, let me talk --

21 MS. ROBESON: Just a second. I'm sorry.

22 MS. KLINGMAN: He brought up a subject that's dear
23 to my heart. So I'll get out of your way.

24 THE WITNESS: I don't know what that is.

25 MS. QUINN: Well, she had to leave and she wanted

1 to hear about it.

2 BY MR. LEIBOWITZ:

3 Q I just want to talk about your house again. You
4 had mentioned that your house is the largest house in the
5 defined neighborhood?

6 A Yes.

7 Q Do you know roughly what the value of your house
8 is?

9 A Well, right now I think I'm appraised at about
10 \$425. It's in the low 400's. I can't remember the exact
11 number here, because they do it every three years.

12 Q Any idea, do you remember what it was in 2006?

13 A I got into the low 500's, \$515-520, at the peak of
14 the market.

15 Q Okay. And the houses that Mr. Kay had considered
16 building, the five houses that we've talked about, have you
17 paid attention to the testimony regarding those houses?

18 A I've heard the testimony.

19 Q Okay. And how would you characterize the size of
20 those houses compared to the size of the existing houses in
21 the neighborhood?

22 A They were substantially bigger than the
23 neighborhood.

24 Q Those houses were going to have, or would have had
25 two car garages. Are two car garages common in the defined

1 neighborhood?

2 A Two car garages are very unusual in the defined
3 neighborhood.

4 Q Can you think of any houses with two car garages
5 in the defined neighborhood?

6 A I can think of one or two.

7 Q And in the greater neighborhood of south Four
8 Corners, are they, are two car garages common?

9 A They're not typical throughout the south Four
10 Corners area.

11 Q And can you think of -- would you even hazard a
12 guess as to how many houses, or proportion of the houses in
13 the greater south Four Corners neighborhood would have two
14 car garages?

15 A Two car garages would be very unusual. I would
16 put it below, 5 percent or lower would be my best guess.
17 There's like 1,200 houses in the South Four Corners
18 Association.

19 Q Let's talk about traffic. How would you
20 characterize traffic on University Boulevard?

21 A Extremely heavy most times of the day.

22 Q And during rush hour?

23 A Extra extremely heavy during rush hour, both
24 directions.

25 Q Have you ever tried to turn from Brunett Avenue

1 onto University Boulevard during rush hour?

2 A Yes, I have.

3 Q Okay. How easy or difficult is it to make a left
4 turn from Brunett Avenue onto University Boulevard during
5 rush hour?

6 A Well, when you reach the top of the cue at
7 Brunett, and you're the first car there, ready to enter the
8 intersection, assuming the intersection is not completely
9 blocked by eastbound traffic, it may take you a minute or a
10 minute and a half to enter the intersection and go halfway
11 before you're stuck in the median waiting for the westbound
12 traffic.

13 Q And then how long might it take you to complete
14 the left turn?

15 A Another minute and a half for the traffic to clear
16 going that direction.

17 Q Have you ever experienced a situation where you
18 were stopped at Brunett waiting to make the left turn, but
19 couldn't because there was already a car sitting in the
20 median?

21 A Well, that's part of getting to the top of the
22 cue. Yes. If the median is blocked, you can't go out.

23 Q And making that, would you characterize making
24 that turn as safe, hazardous, non-events?

25 A It's hazardous most of the times.

1 Q You had mentioned that that's how it is when the
2 intersection isn't blocked by eastbound traffic. How often
3 does that occur?

4 A Almost every morning and evening rush hour.

5 Q And if it's blocked by eastbound traffic, is it
6 possible to make the left turn?

7 A Only when they reach the top of the cue and there
8 is an opening there that you go halfway again.

9 Q Okay. What about a right turn?

10 A Somewhat easier.

11 Q What if right now when we say the intersection is
12 blocked by eastbound traffic, paint a picture of that for
13 us. What does that mean?

14 A Well, I think in New York where I visit
15 occasionally, it's called blocking the box, you know, you go
16 from the right side of the intersection, completely across
17 to the left side of the intersection, bumper to bumper.
18 And, you know, you can't, there's no room to go through.
19 Even when they're parked. They may not be moving but
20 they're parked there and waiting to advance.

21 Q And so when that happens, is it possible to even
22 make a right turn onto University Boulevard?

23 A Well, not when the box is blocked. You have to
24 wait until someone will let you in, squeeze in.

25 Q And when the, when it's bumper to bumper traffic

1 like that, how long might it take you sometimes just to get
2 to the top of the cue?

3 A About a minute, minute and a half for each car in
4 front of you. So if you're the second car back, then you're
5 waiting for them to do their minute and a half cycle to
6 clear it, and you're up. If you're the third car back, it's
7 going to be two to three minutes into the process, about a
8 minute and a half for each car in front of you.

9 Q Do you expect traffic to get better or worse in
10 the future, or stay the same?

11 A I expect traffic on University Boulevard and all
12 of Four Corners to get much worse.

13 Q Why is that?

14 A Well, there is development in all directions.

15 Q Do you have examples of that development that's
16 going on?

17 A Well, just to the north of Four Corners they are
18 redeveloping the former Naval basis is being redeveloped by
19 FDA. It's a job site. They're moving new jobs there.
20 Immediately, that's two miles to the north. About two miles
21 to the west you have downtown Wheaton which is being
22 continually redeveloped as a job center.

23 Two miles to the south you have Silver Spring,
24 which is being developed as a job center, an entertainment
25 venue, new theaters, the new convention center they're

1 putting where the Armory used to be. It's development in
2 all directions.

3 Q In your experience, historically, has traffic
4 gotten better or worse over time?

5 A It gets worse every year, every month.

6 Q How was traffic on University, I mean, on Brunett
7 Avenue?

8 A Not as bad as University Boulevard, but there's
9 still too many nonresidential cars going too fast through the
10 neighborhood.

11 Q And when you say nonresidential cars, what do you
12 mean by that?

13 A Cut through traffic, commercial traffic entering,
14 you know, anyone of my neighbors.

15 Q And cut through traffic, where and why are people
16 cutting through?

17 A Well, they're trying to avoid the intersection at
18 Four Corners, so if you are cutting through going
19 southbound, you're trying to get to Silver Spring. If
20 you're cutting through going northbound, you're trying to
21 get through Four Corners to reach points east, west or
22 north.

23 Q Is Brunett Avenue a major cut through road?

24 A It certainly is.

25 Q Are there speed bumps on Brunett Avenue?

1 A There are.

2 Q How else, if one weren't going to make what you've
3 described as a difficult, time-consuming, and potentially
4 hazardous left turn onto Brunett Avenue, how else might
5 somebody -- I mean, onto University Boulevard, how might
6 somebody else, how else might somebody turn onto University
7 Boulevard?

8 A Well, this is the way I came up here this morning
9 here. I went southbound on Brunett, took a right on Lanard,
10 and took that up to, I believe that's Dallas, where I took a
11 right. Then I went up to Proctor, took a left. At Dennis I
12 took a right, and I approached the intersection that has a
13 light.

14 All those turns, about, you know, it's a mile west
15 of our house, or the applicant's property. There's a light
16 at the intersection of Dennis and University. So that's how
17 you make the left turn onto University Boulevard.

18 Q So why do you, why do you drive through the
19 neighborhood to Dennis to make the left turn, when you live
20 just a couple hundred feet from the turn by Brunett?

21 A Because that's the quickest way, and it's the
22 safest way with a light there.

23 Q Are there other ways to get onto University
24 Boulevard other than driving through the neighborhood to
25 Dennis, or making that turn from Brunett?

1 A Well, there are other combinations of streets to
2 access it, but, you know, those are the two most direct.
3 The rest of them you would be doing more turns.

4 Q If one were to go east on Gilmore, is there a
5 way, do you run into a road that also intersects with
6 University?

7 A You do. You run into the other intersection there
8 at Lorain Avenue.

9 Q Okay. Is that turn from Lorain onto University
10 any easier than Brunett?

11 A It's not easier. It's typically more difficult
12 because you're closer to the Four Corners intersection.
13 Traffic is backed up more there. It takes longer for that
14 to clear.

15 Q What's the traffic like on Gilmore Drive?

16 A There's virtually no traffic on Gilmore Drive.

17 Q And does Gilmore Drive have speed bumps?

18 A No, it doesn't. We don't need them. We don't
19 have cut through traffic.

20 Q How would you characterize Gilmore Drive?

21 A Nice quiet street, virtually no traffic. I looked
22 at the applicant's turning report and there is no cars. It
23 confirmed there's no cars, other than the residents who live
24 there.

25 Q Are you concerned about the impact of the proposed

1 daycare on traffic?

2 A I'm very concerned with the daycare traffic into
3 Gilmore Drive and the neighborhood in general.

4 Q Why is that?

5 A Well, it's certainly going to bring a lot of
6 nonresidential traffic immediately into the neighborhood
7 where it's not now. It's going to steer it off of
8 University Boulevard right into the neighborhood.

9 Q There's been some testimony that a lot of the
10 traffic will be what is called pass by, you know, traffic.
11 Does that lessen the burden in your view?

12 A Well, they're still exiting University Boulevard
13 to come into the neighborhood. Maybe they were passing by
14 the spot, but they have to enter the neighborhood to get to
15 that site, at least two streets, Brunett and Gilmore,
16 Lorain and Gilmore. So they may be passing by University
17 Boulevard, but they're not passing by the neighborhood
18 anymore.

19 Q Is there a, would there be a less intrusive --
20 right now the only entrance or egress from the proposed
21 development is on Gilmore. In your view is there a less
22 intrusive traffic pattern?

23 A Sure, there's several traffic patterns that could
24 be less intrusive into the neighborhood.

25 Q Okay. What would an example of one be?

1 A Well, in and out from University Boulevard is the
2 most obvious, where all our other commercial activities have
3 driveways.

4 Q And there is testimony from the applicants that
5 the State Highway Administration wouldn't permit that. Did
6 you hear that testimony?

7 A I heard that testimony, and that doesn't seem like
8 a good reason to start pushing the traffic into the
9 neighborhood.

10 Q Are there other traffic patterns that would be
11 less intrusive to the neighborhood?

12 A Sure.

13 Q For example?

14 A Well, if you accept the applicant's statement that
15 he can only do right out on Brunett Avenue, then the least
16 intrusive pattern would be a one way entrance on Gilmore, and a one way exit on Brunett.

17 Q Do you have other, any other concerns that we
18 haven't discussed regarding traffic entering and exiting
19 through Gilmore?
20

21 A Well, I'm concerned with the, you know, when there
22 was an exit on Brunett, that was maybe for some of the storm
23 water, the runoff onto Brunett, where there is a storm drain
24 right at the intersection of Brunett and University
25 Boulevard. Without that exit, all the storm water is going

1 to be coming down Gilmore Drive, the surface runoff.

2 Q Let's talk about the parking a little bit. Where
3 do most of the residents of Gilmore Drive park their cars?

4 A On the street.

5 Q Why is that?

6 A Well, we have a pretty old neighborhood we built
7 before there were driveways.

8 Q Do you have a driveway?

9 A No, I do not.

10 Q We heard that there was at least one driveway on
11 Gilmore. Is that the only driveway you can think of, or
12 are there others?

13 A The 400 block of Gilmore Drive, which there are
14 13 houses, has three driveways.

15 Q And you're in the 400 block?

16 A That is correct.

17 Q And the proposed development would be in the 400
18 block?

19 A That is correct.

20 Q Okay. So on the block that we're talking about,
21 10 of the 13 houses do not have driveways?

22 A That is correct.

23 Q Okay. And so, and those cars, those owners have
24 to park on the street?

25 A There's no other place, yes. We park on the

1 street.

2 Q There was some testimony from Mr. Starkey about
3 permit parking. Are you familiar with the permit parking
4 situation?

5 A I am.

6 Q Okay. Is that whole 400 block of Gilmore Drive
7 permit parking only?

8 A Yes, it is.

9 Q What is the parking restriction regarding parking
10 permits?

11 A The east side of Gilmore, the side closest to
12 Safeway is residential parking only from 7:30 to 5:00 Monday
13 through Saturday, and the west side of the property,
14 basically my house up to the applicant's property, is
15 residential permitted parking 9:00 to 2:00 Monday through
16 Saturday.

17 Q And do you know how one goes about getting a
18 parking permit?

19 A Well, you know, the burden is on the neighbors to
20 do it. There is an application process. You have to get a
21 petition from a certain number of signatures, the neighbors
22 in the area. There's a fee. You have to pay the
23 application fee. And I have to renew my permit every two
24 years, at a cost.

25 Q In your experience, is the permit parking -- how

1 well is the permit parking enforced by the County?

2 A Not very well at all.

3 Q And if you were to get it, what would you do to
4 get it enforced more strictly? Is there something you could
5 do to get it enforced more?

6 A Well, you can call an complaint, but you know,
7 every time you call in you typically get a response for a
8 day or two, but then they're off to other neighborhoods.

9 Q And when you say you get a response for a day or
10 two, you mean that somebody comes --

11 A An enforcement agent comes on site and, you know,
12 drives around once or twice during the day.

13 Q And then that person disappears for --

14 A Until you call again.

15 Q Okay. In your view, is the parking enforcement
16 effective?

17 A No, generally they're not.

18 Q Are you concerned that people might use the street
19 that's people coming and going from the proposed daycare
20 might park on the street in residential spots?

21 A Yes, I am. I don't see anywhere else for them to
22 get away from that log jam.

23 Q And by that log jam, what are you referring to?

24 A Well, the single entrance and exit on Gilmoure
25 Drive, the limited parking place for 76 parents to turn over

1 their cars while they pick up and drop off children.

2 Q Are you familiar with the Four Corners master
3 plan?

4 A Yes, I am.

5 Q I'm going to show you, I think you remember,
6 figure 10 on page 23 of the Four Corners master plan. What
7 does that map show?

8 A Figure 10 on page 23 shows various lots,
9 structures, parking lots for part of the Four Corners master
10 plan, not the entire master plan, but part of it.

11 Q Okay. Can you see the Safeway store on the map?

12 A Yes, I can.

13 Q And does the Safeway store have a parking lot?

14 A Yes, it does.

15 Q Is that shown on the map?

16 A Yes, it's shown on the map.

17 Q Can you see the temple on the map?

18 A You mean the temple across from Mr. Kay's
19 property?

20 Q Correct.

21 A Yes, I see the temple.

22 MS. ROBESON: Wait. Across Brunett or across
23 University?

24 THE WITNESS: Across Brunett, the temple on the
25 north side, I believe that's referred to.

1 MS. ROBESON: Across Brunett. Okay. All right.

2 THE WITNESS: I see the temple on the north side
3 of Mr. Kay's property.

4 BY MR. LEIBOWITZ:

5 Q And does the temple have a parking lot?

6 A Yes, it does. It's shown on the map.

7 Q Is that depicted on that?

8 A Yes, it is.

9 Q Can you see the subject property on that map?

10 A Yes, I do.

11 Q And does the subject property, is there a parking
12 lot depicted on the map?

13 A No.

14 Q And based on your knowledge and experience from
15 living in the neighborhood, where did Dr. Strahan's patients
16 park when they came to visit him?

17 A They parked on Brunett Avenue.

18 Q Now, how much traffic was generated from
19 Dr. Strahan's office?

20 A Well, I was working then, so I only saw it in the
21 afternoon. They're late patients, but there was, you know,
22 it's a small clinic. There weren't more than two or three
23 cars parked up there, two or three patients at the time, I'm
24 guessing.

25 Q Are you familiar with the technical staff's report

1 of November 3rd, 2011?

2 A Yes, I am.

3 Q Okay. I believe this is in the record already.

4 MS. ROBESON: Yes, it is.

5 MR. LEIBOWITZ: I don't know what exhibit number
6 it is.

7 MS. ROBESON: I think it's 120.

8 BY MR. LEIBOWITZ:

9 Q Okay. If you could take a look at the technical
10 report. On page five of the technical report, second
11 sentence of the third paragraph, starting with the resulting
12 site?

13 A You want me to read that?

14 Q Could you read that sentence?

15 A The one that starts, the resulting site?

16 Q Correct.

17 A The resulting site layout and building
18 articulation, along with a reduced number of children and
19 employees, and the elimination of an access driveway,
20 produces a special exception that appears to meet the master
21 plan's intent of the residential character and scale.

22 Q Do you agree with that statement?

23 A No, I do not.

24 Q Why not?

25 A Well, I have exceptions or problems with the

1 description of the building articulation and the elimination
2 of an access driveway.

3 Q Why do you disagree with the building
4 articulation?

5 A The Planning Board's opinion of June that
6 recommended a maximum building, a building the size of the
7 maximum with twice the surrounding homes in the very same
8 sentence said, there must be articulation also. It seems a
9 little bizarre to say building articulation now is
10 justification for increasing the proposed building site my
11 70 percent over twice the surrounding neighborhood from
12 twice the size to 340 percent of the size.

13 Q So I don't want to put words in your mouth, but is
14 your disagreement that size and articulation were two
15 different things?

16 A They were two different things in the same
17 guidance, the same thoughts, that you had to have both of
18 those in combination to be an approvable special exception,
19 of what the Board could finish that way.

20 Q And so the articulation didn't make up for the
21 size?

22 A No. They get half the recommendation.

23 Q Why do you disagree with the access driveway?

24 A Well, as I previously testified here, the access
25 driveway on Brunett Avenue, was actually the neighbor's

1 preferred exit. You know, that's gone. It's creating more
2 problems for the neighborhood.

3 Q There's been testimony from the applicant and
4 repeated in a sense in the technical staff report, that the
5 reduction of 20 percent from the last proposal, and 32
6 percent from the initial proposal is sufficient to, so that
7 this proposal conforms with the master plan. Do you agree
8 with that?

9 A I disagree with that statement.

10 Q Why do you disagree?

11 A Well, the Planning Board's guidance that they --
12 the Planning Board's report was very specific, saying it was
13 much too big, and there needed to be substantial reductions
14 to the number of children, the building size, and the
15 parking lot.

16 And they went on specifically to mandate the
17 building should be no more than twice the size of the
18 surrounding homes, which I interpret as approximately twice
19 the surrounding, the defined neighborhood, 2,600 feet.
20 That's a 50 percent cut from the 5,439 square feet that they
21 were evaluating in that decision.

22 Q If the Planning Board hadn't given that exact --
23 there was discussion early in the day about, during
24 Mr. Sekerak's testimony, that it's not mathematical, size
25 and scale. And he sort of chaffed at the suggestion that it

1 could be reduced to math. Without taking into account the
2 math, do you believe that a 4,400 square foot building is,
3 conforms with the character, residential character and scale
4 of houses in the neighborhood?

5 A No, I do not. It doesn't look like any house in
6 my neighborhood.

7 Q Now, the applicant has argued today that the
8 proposed, the five houses that had originally been proposed
9 by Mr. Kay, were approximately the same size, maybe a little
10 bit bigger, maybe a little smaller, and therefore this 4,400
11 square foot proposed building is the character of the
12 neighborhood. What is your response to that?

13 A I would question why what someone could have done
14 five years ago is even relevant to the testimony here. I
15 believe that logic was summarily dismissed in the first
16 technical report from last December/January time frame we
17 noted that the applicant could have built houses there, but
18 chose to pursue a special exception. And that's the
19 standard he should be judgment by, not what he could have
20 done five years ago.

21 Q Is it your, and I may have asked this already, is
22 it your opinion that the houses that Mr. Kay had originally
23 proposed would have conformed with the character of the
24 neighborhood?

25 A They're a little larger. There was more driveways

1 than we typically had, but they were houses. They were
2 neighbors. We would have taken them a welcome basket, just
3 like we do all new neighbors coming to our neighborhood.

4 Q And in terms of the size and scale of those
5 houses, do you, is it your view that the size and scale of
6 those proposed houses would have been in the same character
7 of the size and scale of the houses that are the existing
8 houses in the neighborhood?

9 A They would have been, you know, three to four
10 times the size of the average house, twice the size of the
11 largest house.

12 Q The citizens at the South Four Corners Citizens
13 Association did not take a position opposing the building of
14 those houses.

15 A I'm not aware of what the association position
16 took on that development, but I never heard a neighbor that
17 opposed it.

18 Q And why is that?

19 A It's a house. We welcome new neighbors,
20 particularly if they pay their membership fees. And, you
21 know, the house does not have the parking spot, the traffic
22 impact the five houses would from the daycare center. So
23 it's a house. It's new neighbors.

24 Q How close is this proposed development to the Four
25 Corners commercial district?

1 A It's in the block immediately adjacent to the Four
2 Corners commercial district.

3 Q And is there has been testimony, there was
4 testimony last time from Mr. Kay regarding the proximity of
5 this proposed development to the Metro, not Metro bus but to
6 the Metro trains. Do you know how far the proposed
7 development is from Metro? Do you know what the two closest
8 Metro stops are?

9 A I do know the two closest Metro stops.

10 Q Where are they?

11 A The closest would be Forest Glen Metro stop on
12 Georgia Avenue.

13 Q And what's the next closest Metro stop?

14 A Silver Spring, downtown Silver Spring at the
15 intersection of Georgia and Colesville Road. A little south
16 of Georgia.

17 MS. ROBESON: Mr. Leibowitz, I'm just looking at
18 the time here. What is the relevance of the Metro stop?

19 MR. LEIBOWITZ: There has been testimony about it
20 impacts traffic. There's testimony that many of the people
21 who might work there, or parents wouldn't need to drive
22 because it was very close to the Metro.

23 MS. ROBESON: Okay. And it's my recollection that
24 they were referring to the bus stop on Gilmore and Brunett.

25 MR. LEIBOWITZ: There was testimony about that,

1 but there was also testimony about its proximity to the --

2 MS. ROBESON: Okay. All right. How many more
3 witnesses? I'm trying to see --

4 MR. LEIBOWITZ: He's my last witness.

5 MS. ROBESON: I thought --

6 MR. LEIBOWITZ: Oh, and then there would be two --

7 MS. ROBESON: Two independent.

8 MR. LEIBOWITZ: Yes.

9 MS. ROBESON: And how long do you anticipate your
10 rebuttal to take?

11 MS. MEAD: I have a few questions for
12 Mr. Richardson, so probably at least 15 minutes.

13 MS. ROBESON: No, no, no, not redirect, your
14 rebuttal to his case?

15 MS. MEAD: Probably minimal. We're probably, I do
16 have a closing, but --

17 MS. ROBESON: Okay. Mr. Richardson, do you know
18 how far those two transit stations are?

19 THE WITNESS: Yes, I do. The Forest Glen station,
20 the closest one, is almost two miles. The Silver Spring
21 Metro station is two and a half miles --

22 MS. ROBESON: Okay.

23 THE WITNESS: -- from Mr. Kay's site.

24 MR. LEIBOWITZ: And I'm just going to flip through
25 my -- that may be my last question. I just want to flip

1 through my notes.

2 MS. ROBESON: Okay. Well, take your time, I'm
3 just trying to --

4 MR. LEIBOWITZ: No further questions.

5 MS. ROBESON: All right. Ms. Mead.

6 CROSS-EXAMINATION

7 BY MS. MEAD:

8 Q Mr. Richardson, were you a patient of Dr. Strahan?

9 A No, I wasn't.

10 Q So your knowledge of the house was from the
11 outside and from the block parties?

12 A Yes.

13 Q And you testified regarding the Planning Board's
14 recommendation from this June. And you read the sentence.
15 Again, could you read the line on page two that's
16 highlighted on the Planning Board's recommendation exhibit?

17 A What you have highlighted in yellow?

18 Q Yes.

19 A Specifically, a proposed structure at this
20 location should be, at maximum, no more than twice the size
21 of the surrounding homes and carefully articulated to appear
22 residential in character given the master plan guidance.

23 Q Is there anywhere in that sentence where it talks
24 about the average size of the surrounding homes?

25 A No, it doesn't.

1 Q And is there anywhere in that sentence where it
2 described where to get the size of the surrounding homes, or
3 what to use as the basis?

4 A No.

5 Q Or what they consider the surrounding homes?

6 A No.

7 Q You'd also references your familiarity with the
8 planning staff report dated November 3rd, 2011. But you
9 only read the one sentence that Mr. Leibowitz pointed out.
10 Is it correct that there are other passages in the staff
11 report where they know the applicant has made substantial
12 reductions to the size and scale of the proposal on page
13 six?

14 A Yes, the technical report does say that?

15 Q Does it also repeat that on page seven, with the
16 plan revisions, the daycare center's size has been
17 substantially reduced?

18 A Can you show me that part? Yes, it does say that.

19 Q So it does not just talk about the articulation.
20 It also does talk about the size of the building being
21 substantially reduced?

22 A That's correct.

23 Q You noted that the previous subdivision, while
24 again not part of this application, but used in context,
25 those homes would have been twice the size of the largest

1 house in the neighborhood?

2 A I heard.

3 Q That's the --

4 A I heard testimony it could vary from 3,300 to
5 5,500 square feet. So the 3,300 would not be twice the
6 size. I'm sorry. Repeat the question. I may not have
7 heard it.

8 Q You said in your testimony, and I'm quoting you,
9 that the size of the proposed homes in that subdivision
10 would have been twice the size of the largest house in the
11 defined neighborhood.

12 A 3,300 square feet would not be twice the size, but
13 4,000 to 5,000 would be.

14 Q So the 4,000 to 5,000 square foot structure would
15 have been twice the size of the largest house?

16 A The largest house in the defined neighborhood,
17 yes.

18 Q So the surrounding home in the defined
19 neighborhood, it could be twice the size at around 4,400
20 square feet?

21 A If you define the largest home was surrounding,
22 yes.

23 Q Okay. Thank you. You had mentioned that the SDAT
24 data, where did you obtain the average -- you mentioned that
25 you surveyed the properties. Did you actually survey the

1 properties, or did you just pull the SDAT data on the homes
2 in the neighborhood?

3 A I pulled them from the data. I did not survey. I
4 pull from online.

5 Q And if you could clarify for me, you mentioned
6 that Mr. Sekerak's notation that there were errors in the
7 SDAT reports would only create a less than 1 percent change
8 in your calculations. How do you explain an Exhibit 96(h),
9 his notation that the floor area was 250 percent than what
10 was actually shown on the property?

11 A I'm sorry, I'm not familiar with the exhibit here.

12 Q In Exhibit 96(h) in the record from September
13 26th, it's dated September 21.

14 A Can you show me that exhibit?

15 Q Yes, it's the one prepared by Greenhorne and
16 O'Mara.

17 A Oh, the whole memo. Yes, okay.

18 Q Well, regarding the specific sentence that the
19 area of the home on 219 is 250 percent of what's actually
20 listed in the SDAT sheet. So where do you get the 1 percent
21 from Mr. Sekerak's indication?

22 A Every 1,000 square feet that he increases a house,
23 you divide that over the 1,296 square feet of the 79 houses,
24 that's 1 percent increase in the 1,296 average size. I
25 could do this on a map, if you would like.

1 Q Well, it was 250 percent off for every single
2 home. We're not saying that it is.

3 A 250 percent off on every home would increase the
4 average size 250 percent.

5 Q Okay. But you just got your 1 percent from just
6 saying that only this one particular property had that
7 operation?

8 A I calculated 1 percent based on 1,000 square feet,
9 found by Mr. Sekerak.

10 Q Okay. Ad did you hear his testimony that there
11 were other properties that had errors?

12 A I did.

13 Q Including in his written testimony?

14 A Yes.

15 Q That was more than just that one structure?

16 A That's correct.

17 Q Thank you. You noted that the traffic was heavy
18 on University Boulevard and you had to wait one to one and a
19 half minutes to get across the intersection? Is that
20 correct?

21 A Yes, that is correct.

22 Q How often would you have to wait for a traffic
23 signal, if you know, if there was a traffic signal at that
24 intersection?

25 A Well, there's not a traffic signal at that

1 intersection. But there is one approximately two blocks
2 away at the intersection of University and Colesville. And
3 that's about like a 90-second light.

4 Q So --

5 A Sometimes longer.

6 Q So about a minute and a half wait --

7 A Absolutely.

8 Q -- if there was a light at the intersection, as
9 well?

10 A That's correct.

11 Q So it's not an unusual wait time for an
12 intersection to get through?

13 A For an intersection without a light it's very
14 unusual. But with a light, it would not be unusual.

15 Q You had, again, you had indicated if it takes
16 three minutes to get, one and a half minutes to get to the
17 middle of the intersection, and another one to one and a
18 half minutes to get to the other side, which would imply
19 that there would be 20 left turns in an hour through that
20 intersection, is that correct? If one took the full three
21 minutes?

22 A Three minutes. That's correct. If there were 20
23 cars going in there, that situation, that's correct.

24 Q Sorry, we're doing math again. However, in the
25 traffic --

1 MS. ROBESON: I blame Mr. Starkey.

2 BY MS. MEAD:

3 Q Blaming him again. On page or Exhibit 3 of the
4 traffic study that is in the record, which is traffic impact
5 analysis 12(b) and ©, it notes that there is -- is it
6 correct that it notes that there are 48 left hand turns
7 going through that intersection during the evening peak
8 hour?

9 A That's correct.

10 Q So sometimes it may take less than the three
11 minutes to get to that intersection, even during a rush hour
12 in the evening peak hour?

13 A That's correct.

14 Q And does that same page note for the evening peak
15 hour in the parenthesis that 98 cars were able to make that
16 right turn?

17 A That's correct.

18 Q Okay. You testified that you were concerned about
19 nonresidential traffic into the neighborhood. Is that
20 correct?

21 A That is correct.

22 Q Did you hear Mr. Starkey's testimony, and aware of
23 the traffic study, regarding the pass by nature of the
24 traffic?

25 A I have a vague concept of pass by traffic. Yes, I

1 heard his testimony.

2 Q And how many blocks into the South Four Corners
3 neighborhood, not the defined neighborhood, but how far into
4 the South Four Corner neighborhood is the property?

5 A It's in the first block into the neighborhood.

6 Q Is it right on, directly on University Boulevard?

7 A Well, one side is on University Boulevard,
8 correct.

9 Q And Brunett Avenue?

10 A And Brunett Avenue.

11 Q And in Exhibit 77, the previous subdivision plan
12 for the property for the residential subdivision --

13 A Correct.

14 Q -- are there any curb cuts for the driveways for
15 those two homes on University Boulevard?

16 A There are no curb cuts on University Boulevard.

17 Q So even the single family residential use did not
18 have any curb cuts on University Boulevard?

19 A Not in that plan.

20 Q You noted your concern about the parking
21 enforcement on the streets. Are you aware of the
22 transportation management plan for the project?

23 A I am aware of the transportation management plan.

24 Q And could you read the parking and transportation
25 information section of that transportation management plan?

1 Your indulgence.

2 A This paragraph?

3 Q Yes.

4 A Each year and for each new client/parent, every
5 staff members and client/parent shall receive a copy of this
6 TMP and an additional information necessary to explain the
7 parking and circulation procedures and requirements which
8 may be part of the contract with parents.

9 Upon receipt of the above described materials,
10 each parent and staff member shall sign an acknowledgment
11 indicating that he or she has been advised of Child Way's
12 parking and transportation policies and agreed to comply.

13 The transportation coordinator will maintain
14 records of the acknowledgment of each staff member and
15 client/parent.

16 Q Does the subject provision you just read indicate
17 that the applicant will be responsible for maintaining
18 parking on the property and making sure their attendees are
19 aware of those parking restrictions?

20 A Yes.

21 Q Also, in the transportation management plan, is it
22 correct that there's commitments to have the community
23 liaison and annual report to the Board of Appeals, to your
24 knowledge?

25 A Yes.

1 Q And for that Board of Appeals report, are there
2 commitments to describe the current number of staff using
3 public transportation?

4 A I don't know without reading the report.

5 Q If I can point to page three of the transportation
6 management plan.

7 MS. ROBESON: What exhibit is the --

8 MS. MEAD: 96(I).

9 MS. ROBESON: You know, you don't have to have him
10 read the -- you can simply bring those points out on your
11 closing statement.

12 MS. MEAD: Okay. Well, it was going to his
13 testimony regarding --

14 MS. ROBESON: Well, you can ask him if he's aware.

15 MS. MEAD: Okay.

16 MS. ROBESON: I was just trying to move it along.

17 MS. MEAD: Speed it up. Okay. I will move it on.

18 And if you're aware --

19 MS. ROBESON: What, now, tell me again, that as
20 96(I)?

21 MS. MEAD: 96(I).

22 MS. ROBESON: Okay.

23 BY MS. MEAD:

24 Q Would you agree that part of the requirements in
25 the transportation management plan is that the annual report

1 will include a description of any parking and transportation
2 issues and how they are addressed by the applicant?

3 A I would agree.

4 Q And that would include any parking concerns, if
5 any, that were raised?

6 A Will you show me that part. I didn't memorize it.
7 Oh, yes, it does say that. Yes, it does.

8 Q Are you aware if the applicant is asking for any
9 waivers of the parking code requirements?

10 A No, he's not.

11 Q Were you at the previous hearing on this
12 application in April, March of this year regarding the
13 previous proposal for the application?

14 MS. ROBESON: Which hearing?

15 THE WITNESS: Yes. I don't recall being anyplace
16 in --

17 MS. ROBESON: Not date wise, do you mean the
18 hearing examiner hearing or the --

19 BY MS. MEAD:

20 Q Yes, before the hearing examiner?

21 A I was here April 15th.

22 Q And would you agree that there was testimony
23 regarding the anticipated reduced need for the parking on
24 the subject property, due to its proximity to University
25 Boulevard and the nature of the site on the neighborhood?

1 A I'm not sure I understood that question.

2 Q Would you agree that the testimony was that the
3 parking area, parking spaces would not be required as much
4 for this particular use, based on this particular location?

5 A I heard people testify to that.

6 Q To move things along, would you agree that in the
7 master plan which you testified to, that the property is
8 shown on page 26 as an office use?

9 MS. ROBESON: Okay. I'll stipulate. The master
10 plans -- don't look it up. The master plan speaks for
11 itself. So we'll all look at what the master plan says, or
12 you can direct us on that.

13 MS. MEAD: Okay. I was just leading to my next
14 question.

15 MS. ROBESON: Yes.

16 BY MS. MEAD:

17 Q You mentioned that you felt that this plan
18 discouraged this special exception because it was in the
19 block immediately adjacent to the commercial district, isn't
20 that --

21 A That's correct.

22 Q Well, if the property previously had a dentist
23 office use, which you agreed to early in your testimony,
24 correct?

25 A I believe I did what's identified as a home

1 occupation where Dr. Strahan practiced dentistry.

2 Q And the master plan recognized it as an office,
3 since it was an existing use. Does that constitute an
4 encroachment that's already existing as a nonresidential
5 use?

6 A I wouldn't know about that. I don't know what the
7 term of encroachment is there.

8 Q Okay. And I won't address the Metro. I think you
9 had it correct as far as our Metro testimony was regarding
10 the bus, not the station itself.

11 MS. ROBESON: All right.

12 MS. MEAD: I have no further --

13 MS. ROBESON: Anything else Mr. Leibowitz?

14 MR. LEIBOWITZ: Just quickly.

15 REDIRECT EXAMINATION

16 BY MR. LEIBOWITZ:

17 Q You were asked about your knowledge of the house,
18 about Dr. Strahan's house, whether it was just from the
19 outside, was -- did you have knowledge of the house also
20 from looking at the photographs?

21 A I have some photographs, yes.

22 Q Okay. And you were asked a number of questions
23 about the most recent technical staff report?

24 A Correct.

25 Q It used the term, substantially reduced a number

1 of times.

2 A Correct.

3 Q What was the technical staff saying was
4 substantially reduced?

5 A The current revisions. The original plan was
6 substantially reduced to the current set of revisions here,
7 the original plan.

8 Q Okay. They were basing it from the original plan,
9 from plan one to plan three, not from plan two to plan
10 three?

11 A That is correct.

12 Q Okay. Do you agree that there have been
13 substantial reductions, or just because it says so in the
14 technical staff report?

15 A I do not believe there have been substantially
16 reductions in the building size, the number of staff, or the
17 parking lot.

18 Q Okay. You were asked, and I think the testimony
19 may have been a little bit confused in this regard, about
20 the 1 percent difference that you had testified to on
21 direct.

22 A Correct.

23 Q I was going to clean that up a little bit. Would
24 you explain your calculation about how you came to the
25 conclusion that for each 1,000 square feet of potential

1 error that Mr. Sekerak found, that that would only be a 1
2 percent change in the average home size in the defined
3 neighborhood?

4 A Well, the average home size being calculated at
5 1,296 square feet, times the 79 homes in the defined
6 neighborhood, equals some very big number. And if I
7 increase that, if I find another 1,000 square feet that has
8 been mismeasured someplace, and add that to the very big
9 number, and divide it by 79, the increase is going to be
10 very small, less than 1 percent, less than 100, a little
11 over 100. It would be 1,000 divided by 79 homes. It would
12 increase the average size.

13 Q And you had said that you had looked up on SDAT
14 the square footage of everyone of the 79 homes?

15 A All 79 homes, correct.

16 Q Okay. And based on your review of that, and
17 having a basic knowledge of what the house sizes on Gilmore
18 Drive were, did you notice any substantial mistakes or could
19 you tell any substantial mistakes on Gilmore Drive?

20 A No, I did not identify any mistakes on Gilmore
21 Drive.

22 Q Okay. And do you have any reason to believe that
23 there are, other than the one or two or three examples that,
24 of the 79 Mr. Sekerak identified, are there substantial
25 mistakes?

1 A I have no reason to believe there's other errors
2 in the state data.

3 Q You were asked about waiting at traffic lights.

4 A Correct.

5 Q When you were waiting at the traffic light at
6 Dennis Avenue and University Boulevard, and the light turns
7 green, how many cars can go through that light at one time,
8 in one second?

9 A Well, 10-12 being a cycle.

10 Q Okay. So in a minute and a half, 10 or 12 cars
11 can go through the light?

12 A That's correct.

13 Q Do you believe it's possible for 10 or 12 cars to
14 go through the intersection of Brunett and University
15 Boulevard in a minute and a half during rush hour?

16 A No.

17 Q Is there any time of day when 10 or 12 cars may be
18 able to go through that intersection at on time?

19 A I don't see that, no.

20 Q At perhaps 2:00 in the morning?

21 A I have not personally checked it at 2:00 a.m. in
22 the morning. Ask me at 5:00 a.m. and I'll answer that.

23 Q At 5:00 a.m., do you think 10 or 12 cars could go
24 through?

25 A No.

1 MS. ROBESON: Okay guys.

2 MR. LEIBOWITZ: Okay.

3 MS. MEAD: We're not open at 5:00 a.m.

4 MS. ROBESON: You know, this is my situation.

5 MR. LEIBOWITZ: No further questions.

6 MS. ROBESON: I have a family memorial service to
7 go to. So I can probably squeeze until 5:30. Otherwise,
8 you guys are going to have to think if you have a, you know,
9 if you are here to do another date. I'm willing to scoot it
10 to 5:30, but it's close. All right. So I am going to take
11 a five minute break to call my husband and tell him I'm
12 scooting it to 5:30. And you can think about it, and we'll
13 be back here at 4:00. All right.

14 (Whereupon, at 3:52 p.m., a brief recess was
15 taken.)

16 MS. ROBESON: We're back on the record.

17 (Discussion off the record.)

18 MS. ROBESON: All right. Did you have a
19 scheduling matter, or do you want to see how far we get
20 through?

21 MR. LEIBOWITZ: We --

22 MS. MEAD: -- have a proposal.

23 MR. LEIBOWITZ: Yes, we discussed during the
24 break. And what we were going to propose was that maybe
25 rather than kind of pushing through what has already been

1 kind of a long day, and interfering with your family
2 situation --

3 MS. ROBESON: Well, you're not interfering, but I
4 can't stay later than 5:30.

5 MR. LEIBOWITZ: Our proposal is that, and because
6 it seems unlikely that we're wrap up today --

7 MS. ROBESON: All right.

8 MR. LEIBOWITZ: -- sort of under any circumstances
9 -- that maybe we just call it a day and start fresh on a
10 future day.

11 MS. ROBESON: All right.

12 MR. LEIBOWITZ: And then --

13 MS. MEAD: And then the record would be closed,
14 too, then, so we wouldn't have the back and forth.

15 MS. ROBESON: No, no, the record is not closed
16 until the hearing I done.

17 MS. MEAD: I guess the business days from the --

18 MS. ROBESON: You're right, because that will give
19 cross-examination or time to address the staff report and
20 some of the last minute information that has come in.

21 MR. LEIBOWITZ: Correct.

22 MS. ROBESON: The next two dates that I can do, I
23 did ask while I was in there, is December 5th. Wait a
24 minute. Yes, December 5th and December 9th, which is a
25 Monday and a Friday.

1 MR. LEIBOWITZ: I know I can't do the 5th.

2 MS. ROBESON: Do you anticipate being more than
3 one day?

4 MS. MEAD: No.

5 MS. ROBESON: No. Okay.

6 MR. STARKEY: You have the 5th open?

7 MR. KAY: Louis can't do the 5th.

8 MR. STARKEY: No, I have, I have another case on
9 the 5th already.

10 MS. ROBESON: The nursing home?

11 MR. STARKEY: Yes.

12 MS. ROBESON: Well, he just postponed that.

13 MR. STARKEY: He did?

14 MS. ROBESON: Let me be his messenger. They moved
15 it, just for your information, it's moved to January 27th.

16 MR. STARKEY: Okay.

17 MS. MEAD: We can do the 9th, then.

18 MR. LEIBOWITZ: Well, let me --

19 MS. ROBESON: Otherwise we're into January,
20 because we only schedule on Mondays and Fridays.

21 MR. LEIBOWITZ: I have other Court, other hearings
22 on both of those days. And I really, I mean, I obviously
23 want to get it done as soon as possible, as the applicant
24 does.

25 MS. MEAD: Yes, we --

1 MS. ROBESON: Are your hearings at the other place
2 going to take all day? Where's your other hearings, Circuit
3 Court?

4 MR. LEIBOWITZ: At the Circuit Court. I have two
5 at 11:00 on the 5th and one at 1:30. And then I could maybe
6 do it in the afternoon on the 9th.

7 MS. MEAD: That would be fine. I don't anticipate
8 it taking more than the afternoon.

9 MR. LEIBOWITZ: I could do it on the afternoon of
10 the 9th, if that's okay.

11 MS. ROBESON: So when in the afternoon? I thought
12 you said 1:30 you have something.

13 MR. LEIBOWITZ: No, on the 5th I have 11:00 and
14 1:30. So that makes it --

15 MS. ROBESON: The 5th out. Okay.

16 MR. LEIBOWITZ: Yes. That's why I said I couldn't
17 do the 5th. But my -- I could do it at like 1:30 on the
18 9th. Is that --

19 MS. ROBESON: We can set it for 1:30 on the 9th.
20 Are you okay with that?

21 MS. MEAD: Yes.

22 MS. ROBESON: And to my knowledge, I don't have
23 anything, so we have a little more flexibility as far as
24 going late.

25 MR. LEIBOWITZ: How late are you allowed to stay

1 on Friday afternoon?

2 MS. ROBESON: We can stay as long as we wish, as
3 long as you have stamina. When people start falling --
4 let's set it for 1:30, but let's try and not make anybody
5 fall or faint or anything like that. Okay. So we'll try
6 and move it along. Hopefully, optimistically, we'll end by
7 5:00.

8 MR. LEIBOWITZ: I think we should be able to do
9 that, I think, because there's only, there's the two more
10 witnesses from the other two neighborhoods, and I don't
11 expect that, I don't think they would even take an hour
12 each, but even if they did.

13 MS. ROBESON: Okay. Then you have rebuttal.

14 MS. MEAD: Yes, which I don't plan to, I don't
15 think will be lengthy.

16 MS. ROBESON: All right. All right. So what I'm
17 going to do is continue this case to December 9th at 1:30
18 p.m. All right. Thank you very much.

19 (Whereupon, at 4:07 p.m., the hearing was
20 adjourned.)

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C E R T I F I C A T E

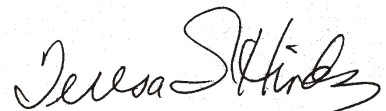
DEPOSITION SERVICES, INC., hereby certifies that the attached pages represent an accurate transcript of the electronic sound recording of the proceedings before the Office of Zoning and Administrative Hearings for Montgomery County in the matter of:

Petition of Gilmoure-Brunett

Special Exception No. S-2781

OZAH No. 11-05

By:

A handwritten signature in black ink, appearing to read "Teresa S. Hinds", is written over a light gray dotted rectangular background.

Teresa S. Hinds, Transcriber